



ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING

Nauru ME1

# Mutual Evaluation Report

Anti-Money Laundering and Combating the  
Financing of Terrorism

# Republic of Nauru

July 2012

Nauru is a member of the Asia/Pacific Group on Money Laundering (APG). This evaluation was conducted by the APG and was adopted as a 1st mutual evaluation by its Plenary on 18 July 2012.

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## Acronyms

AMLA	<i>Anti-Money Laundering Act 2008</i>
AML/CFT	Anti-money laundering and combating the financing of terrorism
CTTOC	<i>Counter Terrorism and Transnational Organised Crime Act 2004</i>
CDD	Customer due diligence
CIU	NPF Criminal Investigation Unit
DJBC	Department of Justice and Border Control
DNFBP	Designated non-financial businesses and professions
EA	<i>Extradition Act 1973</i>
FATF	Financial Action Task Force
FIU	Financial intelligence unit
MACMA	<i>Mutual Assistance in Criminal Matters Act 2004</i>
ML	Money laundering
MLA	Mutual legal assistance
NAC	Nauru Agency Corporation
NPF	Nauru Police Force
NPO	Non-profit organization
NPRT	Nauru Phosphate Royalties Trust
NTC	Nauru Trustee Corporation
ODPP	Office of Director of Public Prosecutions
PEP	Politically exposed person
POCA	<i>Proceeds of Crime Act 2004</i>
PTCCC	Pacific Transnational Crime Coordination Centre
RONPhos	Republic of Nauru Phosphate Corporation
SJ	Secretary for Justice
STR	Suspicious transaction report
TF	Terrorist financing
UNSCR	United Nations Security Council resolution

## **Preface**

### **Information and methodology used for the evaluation of Nauru**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Nauru was based on the Financial Action Task Force (FATF) Forty Recommendations and Nine Special Recommendations, and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Nauru, and information obtained by the evaluation team during its on-site visit to Nauru from 24 October 2011 to 2 November 2011.
2. During the onsite visit the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in the Annex to the Mutual Evaluation Report.
3. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The evaluation team consisted of:

#### **Legal expert**

- Ms Elizabeth Liu, Senior Government Counsel, Department of Justice, Hong Kong, China

#### **Financial experts**

- Mr David Mackey, Technical Advisor, Australian Transaction Reports and Analysis Centre
- Mr Khoirul Muttaqien, Head of Market Surveillance Division, Indonesian Securities Commission

#### **Law enforcement experts**

- Mr Walter Henry, Senior Intelligence Officer, Cook Islands Financial Intelligence Unit

#### **APG Secretariat**

- Mr Dietmar Kahles, Executive Officer
- Mr David Shannon, Principal Executive Officer

4. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. This report provides a summary of the AML/CFT measures in place in Nauru as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Nauru's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

## **Executive Summary**

1. Nauru faces low risks of money laundering (ML) and terrorism financing (TF).
2. Up until 2004 Nauru's government pursued various policies which made it attractive for international ML. There is evidence of very significant levels of ML through Nauru prior to improved anti-money laundering (AML) controls and the abolition of Nauru's offshore banking sector in 2004.
3. Since the late 1990s and up until now Nauru has experienced an economic crunch, which precipitated the collapse of the Bank of Nauru. Between the period 2004 and 2008 there was no formal financial institution providing financial services in Nauru. A branch of Western Union has operated from a hardware store and offered remittance in Nauru since 2008.
4. At the time of the onsite visit, Nauru had no operational bank and there was no financial institution offering financial services beyond the one Western Union branch. The economy is entirely cash based and reliant on formal and informal remittance.
5. With the abolition of the offshore banking sector in 2004, there is only a relatively small offshore company registry operating in Nauru. At present only 59 corporations are registered under Nauru law, with a number of those pending for being struck off the registry. Fewer than five corporations per year have been registered over the past five years. Eleven trustee company licenses are in operation. In the past 10 years no new trust company licenses have been issued, although, 15 unit trusts have been formed under the 11 existing licenses.
6. The offshore companies and trusts represent a residual risk that Nauruan legal persons or arrangements could be used for laundering the proceeds of foreign offences, although the very low rate of company and trust formation in the sector may indicate that the risks are relatively low.
7. Nauru is a low crime jurisdiction. The very narrow economic base, the absence of financial institutions, and the very strict land tenure and associated restrictions on foreign investment, sees very few opportunities to introduce proceeds of crime into the formal Nauru economy.
8. Nauru has some experience in forfeiting assets directly linked to fraud against the government. The authorities have good information on the volume and techniques of laundering the proceeds of crime in Nauru, with the exception of possible misuse of corporate vehicles. Proceeds of crime from the few detected domestic profit-driven crime cases were used for personal consumption and granting of favours to family, including investment in low value motor cycles.

## **Key Findings**

9. Nauru has criminalized money laundering (ML) and terrorism financing (TF), but has not yet utilised the offences. Some domestic predicate offences are missing. A wide range of terrorism financing acts are criminalised. There is no criminalisation of funding terrorist organisations or individual terrorists, other than those prescribed by the Nauru government. At the time of the onsite

visit and the period immediately thereafter, no organisation or individual had been prescribed<sup>1</sup>. Nauru has limited provisions in statute to implement United Nations Security Council Resolution (UNSCR) 1267 and successor resolutions, however it does not provide provisions to freeze property without delay and had not been brought into force at the time of the onsite visit. Nauru has a provision for a domestic designation of terrorist entities as required under UNSCR 1373, but there are no provisions to freeze related property without delay.

10. Law enforcement and prosecution authorities have powers to prosecute ML and TF.
11. Nauru set up its Financial Intelligence Unit (FIU) in 2004 as an administrative FIU with AML/CFT supervisory responsibilities. Nauru has taken steps to make the FIU operational. The resource constraints on the FIU are being addressed with the appointment of a new FIU Supervisor in October 2011, although procedures and systems are not yet in place to make the FIU effective.
12. Despite the almost complete absence of a financial sector, Nauru statute requires the full range of financial institutions to adopt AML/CFT preventive measures under the *Anti-Money Laundering Act 2008* (AMLA). The preventive measures cover many elements of the international standards, with the exception of detailed requirement for beneficial ownership information in the course of customer due diligence (CDD) and some other key obligations. Very limited guidance has been given or supervision undertaken to ensure effective implementation of preventative measures.
13. The two active DNFBP in Nauru are wholly government owned. The Nauru Agency Corporation (NAC) provides all company services for Nauru Corporations. The Nauru Trustee Corporation (NTC) licenses trust companies. AML/CFT provisions are not yet fully implemented by the two trust and company service providers.
14. There is no regulatory framework for non-profit organisations (NPO). Measures to protect NPOs from abuse need to be established.
15. Statutory provisions for mutual legal assistance (MLA) are broadly comprehensive, although their complexity may impede implementation. The gaps in coverage of domestic predicate offence may undermine effective MLA. Nauru has never received or made an MLA request. The *Extradition Act 1973* includes ML and TF as a basis for extradition. Nauru can only extradite to countries designated in the law, however, no countries are designated. Nauru would need to expedite a process of designating a country before an extradition request could be met.
16. FIU to FIU international cooperation is supported in statute, although legal provisions appear to block the FIU from cooperating with foreign counterparts on supervisory issues. Close restrictions on the FIU disseminating information relating to tax offences may also impede FIU to FIU information sharing. There are some practical impediments to police to police cooperation due to capacity constraints and non-participation in Interpol at present.

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<sup>1</sup> Effective 30 May 2012, under Section 4(2) of the *Counter Terrorism Transnational Organised Crime Act 2004* (CTTOC) the Minister prescribed UNSCR 1267 Al Qaida Sanctions List as updated 10 May 2012, which would criminalise financing those Al Qaida entities on the list.

17. The results achieved by the AML/CFT regime in Nauru are broadly commensurate with the risks and threats facing Nauru, although more needs to be done in relation to implementing AML/CFT controls in the offshore sector. Guidance and supervision of the alternative remittance providers needs to be undertaken.
18. The following steps are recommended as priorities, given the situation facing Nauru:
  - The limited resources available for AML/CFT in Nauru should be better supported by strategies of prioritised implementation.
  - Nauru should ensure that the Nauru Agency Corporation and Nauru Trustee Corporation prioritise implementation of AML/CFT controls for the offshore sector and that AML/CFT supervision of these entities is the priority.
  - Nauru should adopt a national AML/CFT strategy commensurate with the resources available to the government.
  - Nauru should continue to strive to attract a banking institution to ensure that a wider range of financial services are available to Nauruans and that these fall under national AML/CFT controls.
  - Nauru should continue with reforms to pass a comprehensive Criminal Code to cover all predicate offences, including comprehensive corruption offences.

#### **Legal Systems and Related Institutional Measures**

19. **Nauru has criminalized money laundering through the Anti-Money Laundering Act 2008 (AMLA).**
20. **The ML offence defined by the AMLA provides a broad definition of the physical elements, but the range of domestic predicate offences remains too narrow.** The coverage of proceeds of foreign ‘unlawful activities’ may be interpreted to provide broad coverage of foreign predicate offences. The law does not contain any requirements that mandate prior conviction for a predicate offence.
21. **The AMLA extends criminal liability to legal persons both incorporated and unincorporated.** Both the corporation and those who act on the corporation’s behalf are held liable. There is no experience in Nauru of prosecuting legal persons.
22. **Nauru criminalises terrorism financing in the Counter Terrorism and Transnational Organised Crime Act 2004 (CTTOC), and has ratified the United Nations Convention on the Suppression of Terrorism Financing.** The provision and collection of funds for the purposes of terrorist acts is sufficiently covered by criminalisation. Criminalisation of financing terrorist organisations and individual terrorists is limited to those organisation prescribed by the Minister of Justice and Border Control. At the time of the onsite visit no terrorist organisation or individual terrorists were prescribed rendering the relevant provisions inactive.<sup>2</sup>

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<sup>2</sup> Ibid

23. **The proceeds of crime regime is set out in the AMLA and the *Proceeds of Crime Act 2004 (POCA)* and the *Customs Act 1921*, which provide a conviction-based proceeds of crime recovery regime.** Property has been confiscated in two cases, including one large-scale fraud. There is a lack of coverage of property indirectly derived from proceeds of crime and property held by 3<sup>rd</sup> parties. The overlapping regimes for confiscation may be confusing for implementation.
24. **Nauru lacks a legal basis to comprehensively implement UNSCR 1267.** Freezing pursuant to UNSCR 1267 is enabled, in part, by the CTTOC; however it is limited to the government being able to seek a court order to freeze terrorist property of specified persons or entities, which would result in significant delays. In addition, the provision is reliant on the Minister for Justice and Border Control issuing a notice to designate the entities listed from time to time by the UN Security Council as terrorist entities before it can have effect in Nauru. This had not been done at the time of the onsite visit<sup>3</sup>. The CTTOC prescription requirement would result in a time consuming need to issue a notice each time the 1267 list is updated by the United Nations. The CTTOC requires financial institutions and DNFBPs, which may be holding terrorist property, to check for matches with the list; however the very small private sector and the trust and service providers did not appear to be aware of the obligation.
25. **Nauru's ability to implement UNSCR 1373 is limited on the same basis as set out in relation to UNSCR 1267.** The minister has not designated any domestic terrorists or issued a notice to give effect to any foreign lists.
26. **Nauru set up a financial intelligence unit, through the *Anti-Money Laundering Act 2004 (AMLA 2004)*, in 2004. The amended legislation (AMLA 2008) enhanced the FIU's powers. A restructure was undertaken in October 2011 with the intention of taking steps to make the FIU effective.** The FIU is mandated to receive, analyse suspicious transaction reports (STR) and disseminate intelligence to the Office of the Director of Public Prosecutions (ODPP), rather than the police. The ODPP has no direct role in investigating criminal offences; however the role to receive disseminations from the FIU reflects a government policy to ensure the integrity of use of STRs by the police by ensuring the ODPP has a form of oversight of subsequent investigations. The FIU has not yet received STRs. Processes to analyse information received from reporting institutions have not been used. The operational independence is currently not sufficiently guaranteed, notably on staffing and budget.
27. **The Nauru Police Force (NPF) is designated by AMLA 2008 and CTTOC to investigate ML and TF and has the necessary powers.** The NPF is increasing the capacity of its officers to develop financial intelligence and investigate ML cases. It is not clear that there is a close awareness of either law, in part because of the rarity of transnational crime cases or profit driven crimes in Nauru.
28. **Capacity constraints with the ODPP may give rise to practical difficulties in implementation.**

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<sup>3</sup> Effective 30 May 2012, Nauru prescribed the UNSCR 1267 Al Qaida list as updated 10 May 2012.

29. **Nauru's regime to cover cross-border transportation of currency and bearer negotiable instruments is set out in two laws which overlap.** While the Customs Act is being implemented, the more comprehensive provisions in the POCA to give effect to SRIX have not been implemented. Neither piece of legislation provides for automatic sharing of cash export declaration with the FIU, although the FIU can access them on request. Nauru Customs has made a number of detections of undeclared cash.

#### **Preventive Measures—Financial Institutions**

30. At the time of the onsite visit, there was no bank or other financial institution offering financial services in or from Nauru, with the exception of one remitter, Western Union.
31. Since 2004 Nauru has not approved the establishment of or accepted the continued operation of shell banks. Regulatory action taken in 2004 wound up the operation of the legacy offshore banking and insurance sector.
32. **AML/CFT preventive obligations are set out in the AMLA 2008.** The AMLA 2008 also creates rule-making powers for the Cabinet to implement requirements under that Act, but these have not been used. Unenforceable guidelines were issued under the earlier AMLA 2004 on STR reporting and CDD. These need to be updated to reflect the most current obligations under the AMLA 2008. No guidelines have been issued specific to the remittance sector, which is the only financial sector currently operating in Nauru. Nauru does not adopt any risk based approaches in the application of preventative measures to any sector.
33. **The CDD requirements cover the key building blocks of the preventive measures, although gaps include weakness with beneficial ownership requirements and enhanced CDD for high risk customers.**
34. **The AMLA establishes enhanced due diligence requirements for foreign politically exposed persons.** The coverage is complete with the exception of an obligation to check on beneficial owners being PEPs. There are comprehensive obligations on cross-border correspondent banking relationships and reliance on intermediaries and introduced business, although there are currently no applicable financial institutions financial institutions (FIs) in Nauru. There are no obligations relating to non-face-to-face business.
35. **Financial institution secrecy is not an impediment to the effective implementation of the AML/CFT regime.**
36. **The AMLA includes generally satisfactory record-keeping requirements, in particular allowing for the reconstruction of individual transactions.**
37. **Remitters are required to maintain full originator information for both domestic and cross-border wire transfers regardless of the amount.** There is a need for guidance on what should be included as originator information.
38. **There are generally comprehensive obligations in relation to paying attention to unusual transactions.**

39. **Nauru requires FIs to pay specific attention to business relationships and transactions with counterparts from or in countries not sufficiently applying the FATF Recommendations.** No guidance has been given to assist the one financial institution to apply these provisions.
40. **AMLA creates obligations to report STRs for ML and TF to the FIU, however no STRs have been filed to date.** The scope of the STR reporting obligation under AMLA is limited by the narrow range of predicate offences and restrictive conditions in relation to tax matters. What constitutes suspicion is defined in AMLA in a satisfactory way.
41. **AMLA provides for satisfactory safe harbor and tipping-off provisions.**
42. **Nauru issued guidelines for reporting, and examples of “red flags” to identify suspicious transactions.** A standard STR reporting form was issued in January 2009 and circulated by the FIU to the widest range of entities.
43. **AMLA defines generally satisfactory requirements for financial institutions on internal controls, although more is needed in relation to audit.** There is a requirement to appoint compliance officers, although not at management level. The compliance officers’ duties must encompass AML/CFT requirements and related risk management. Independent audit and auditors is not a requirement.
44. **Nauru does not yet have a prudential regulator or supervisor.** Banking legislation is limited in relation to its coverage of core principles. No prudentially regulated institutions operate in Nauru.
45. **Monitoring, supervision and enforcement of compliance with AML/CFT requirements is the responsibility of the FIU.** It has the authority to conduct off-site and on-site inspections and to review and access policies, books and records. It can compel the production of or access to all relevant records, documents and information without a court order. The procedures and capacity to conduct supervision is not yet well developed. In practice a lack of staff resources and limited experience has meant thorough supervision of the FI has not begun.
46. **Nauru has some requirements for ‘fit and proper’ testing at market entry (banking and corporations) to ensure criminals cannot control financial institutions, but other sectors are not covered.**
47. **The FIU can impose sanctions on financial institutions, although it is not clear that this extends to directors and senior management.** There is a range of effective and persuasive criminal and administrative sanctions. Criminal sanctions for failure to lodge STRs may not be proportionate, given the apparent strict liability.
48. **Nauru took initial steps to notify informal remittance services of their obligations under the AMLA 2008 in 2009, but little engagement has been noted until the time of the Mutual Evaluation onsite visit.**

## Preventive Measures—Designated Non-Financial Businesses and Professions

49. **All Designated Non-Financial Businesses and Professions (DNFBPs) are subject to the full range of AML/CFT obligations under the AMLA 2008.** The strengths and weaknesses with preventative measures would apply equally to controls over DNFBPs.
50. **The only DNFBPs presently active in Nauru are the wholly government owned company service provider (Nauru Agency Corporation) and separate trust service provider (Nauru Trustee Corporation).** In practice CDD is being conducted, although not to the extent of identifying beneficial ownership. It is not clear that TCSPs are checking for PEPs or monitoring for unusual transactions. No STRs have been provided by any DNFBP in Nauru.
51. **AML/CFT supervision of DNFBPs is the responsibility of the FIU.** In practice the FIU Head also holds the position of the Registrar of Corporations in Nauru and has oversight of the company service provider under both functions. The interaction between the Registrar and the company service provider in both roles has improved the compliance levels with identification processes. No AML/CFT supervision of the Nauru Trustee Corporation has taken place.
52. **Deepening of AML/CFT culture in the Nauru Agency Corporation and Nauru Trustee Corporation is needed.** The offshore companies and trusts represent a residual risk that Nauruan legal persons or arrangements could be used for laundering the proceeds of foreign offences.

## Legal Persons and Arrangements & Non-Profit Organizations

53. **Nauru's legal framework for corporate entities requires the registration of corporations, but the data available with the Registrar is limited to formal ownership and does not require beneficial ownership information to be included.** The requirement for yearly renewal of incorporation, including identifying owners and directors is verified by the Registrar. This information is available to law enforcement as needed. However, its value to law enforcement is undermined by the absence of beneficial ownership information.
54. **Bearer shares and share warrants are able to be issued for corporations formed under the Corporations Act 1972.** There is a lack of effective controls over the operation of these provisions.
55. **The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership.** Nauru recognizes trusts through the *Nauru Trustee Corporation Act 1972*. The value to the FIU and law enforcement of trust licensee information is undermined by the absence of beneficial ownership information.
56. **There is no legal framework for the incorporation of non-profit organisations in Nauru.** This is a significant problem for the operation of civil society organisations. There are no measures in place to implement SRVIII.

## International Cooperation

57. **Nauru has ratified the United Nations Terrorist Financing Convention. Nauru has signed but is not yet a party to the Palermo Convention. Nauru is not a party to the Vienna**

**Convention.** Nauru has not yet effectively implemented key elements of those conventions, or UNSCR 1267 or 1373.

58. **Statutory provisions for mutual legal assistance are broadly comprehensive, although overlapping regimes may impede implementation.** The gaps in coverage of domestic predicate offence may impede effective MLA. Nauru has never received or made an MLA request.
59. **The extradition law includes ML and TF as a basis for extradition.** Nauru can only extradite to countries designated in the law. No countries are designated. Nauru would need to expedite a process of designating a country before an extradition request could be met.
60. **FIU to FIU international cooperation is supported in statute, although usage restrictions in the AMLA appear to block the FIU from cooperating with foreign counterparts on supervisory issues.**
61. There are some practical impediments to police to police cooperation due to capacity constraints and non-participation in Interpol at present. Further steps are being taken to deepen the regional cooperation between Nauru and other police forces.
62. **The provision of assistance because of possible involvement of fiscal matters appears to be prevented by the wording of sub-section 10(2) of the AMLA.** The definition of “unlawful activity” in section 2 of the AMLA expressly excludes tax offences.

#### **Recommended Short Term Actions (12- 18 months)**

- Develop a national AML/CFT strategy commensurate with available government resources.
- Ensure that the Nauru Agency Corporation and Nauru Trustee Corporation prioritise implementation of AML/CFT controls for the offshore sector and encourage STRs to be filed. This would include awareness raising and targeted supervision.
- Become a party to the Palermo Convention on Transnational Organised Crime and the Vienna Drugs Convention.
- Continue with reforms to pass a criminal code to cover all domestic predicate offences, including comprehensive corruption offences.
- Seek assistance to amend the Extradition Act to overcome the fact that the law cannot be used in its current form as there are no bilateral agreements and Nauru is not party to multilateral conventions.
- Establish a strategic plan for the FIU to support prioritized implementation.
- Consolidate the cross border declaration regime and spontaneously share reports with the FIU.
- Improve outreach and supervision with the remittance sector and encourage STRs to be filed.
- Continue to strive to attract a banking institution, including the establishment of a prudential regulatory framework, to ensure that a wider range of financial services are available to Nauruans and that these fall under national AML/CFT controls.
- Consider repealing restrictive tax secrecy provisions which may impede international cooperation and information sharing in relation to potential misuse of offshore corporate vehicles.

## 1. GENERAL

### 1.1. General Information on Nauru

#### Geography and Demography

1. The Republic of Nauru (Nauru) is one of the world's smallest countries with a population of about 10,000<sup>4</sup>. It consists of a single island of 21 square kilometres (km), located in the Pacific Ocean just south of the equator and some 2000 km east-northeast of Papua New Guinea. The nearest island is Banaba or Ocean Island in Kiribati, located more than 250km to the east.
2. The island is surrounded by deep water and has no protective outer reef or natural harbour. It consists of a narrow, flat coastal strip and a raised central plateau. The plateau, locally known as "topside", consists mainly of previously mined land and forms an inaccessible landscape of jagged coral pinnacles, interspersed with weeds and low shrubs.
3. Nauru was a German protectorate from 1888 until Australian troops seized it during World War I. The League of Nations granted a joint mandate to Australia, Britain, and New Zealand to govern the island in 1919. Japan occupied Nauru during World War II, and in 1947, the United Nations designated it as a trust territory under Australia. Nauru gained independence in 1968, became an associate Commonwealth member in 1969, and joined the United Nations in 1999.
4. Nauru's population is concentrated in the coastal strip and around Buada lagoon. At the time of the 2002 Census, about  $\frac{3}{4}$  of the population were indigenous Nauruans with the remainder mainly being workers and their families from Kiribati, Tuvalu and the People's Republic of China. Between 1992 and 2002, there was net outward migration of about 200 people per year with anecdotal reports suggesting that the rate of emigration, particularly among non-indigenous residents, has increased in recent years. In 2006, the Government repatriated almost all of the remaining workers from Kiribati and Tuvalu (including some second and third generation residents), following large scale redundancies from the Republic of Nauru Phosphate Corporation (RONPhos) and Nauruan government departments.<sup>5</sup>
5. Nauru's fertility rate is high (average of 3.9 births per woman), however it also has a high mortality rate. This combination has skewed the population distribution towards children and young adults. The birth rate has fallen in recent years, possibly due to reduced incomes and increased hardship among some sections of the population. However, according to the Asia Development Bank's (ADB) *Country Economic Report 2007* Nauru's current reduction in birth rates seems unlikely to continue.
6. Because of poor nutrition and a variety of other health factors<sup>6</sup> life expectancy in Nauru is 60 years (56 for men and 65 for women), well below the global and regional average.<sup>7</sup>

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<sup>4</sup> 2011 Census figures were not yet available at the date of this report.

<sup>5</sup> Asian Development Bank Country Economic Report, November 2007.

<sup>6</sup> US Department of State, Bureau of East Asian and Pacific Affairs, Background Note: Nauru, 31 August 2011.

<sup>7</sup> World Health Organization, Nauru Health Profile (last update 4 April 2011).

7. Nauruan is the predominant language spoken, however, English is the language used for official and administrative purposes.

### **Economy**

8. Nauru's principal resource, and only natural resource of significance other than fisheries, is phosphate rock. Phosphate was discovered in Nauru at the beginning of the 20th century and has been mined since that time. Phosphate mining provided the main source of the nation's income until the late 1980s, with production running at around 2 million tons per year in the 1970s and early 1980s. Production of phosphate declined sharply in the late 1980s and early 1990s. With the near depletion of readily accessible phosphate reserves in 2000, mining on a large-scale commercial basis ended, but there is a sizable secondary underground resource, which has the potential to provide a future income stream for Nauru. The government-owned mining company RONPhos resumed mining and exporting phosphate in 2007. The exploitation of the subsurface secondary reserves began in late 2009, combined with a rehabilitation program for mined-out land (previous mining made more than 80% of the island uninhabitable). Phosphate revenue is shared between the Government, land owners and the Nauru Phosphate Royalties Trust (NPRT).
9. Having once boasted the second-highest per capita Gross Domestic Product (GDP) in the world thanks to its phosphate mines, Nauru is today almost totally dependent on foreign aid. The decline of mining saw a dramatic economic contraction from the late 1990s, compounded by government corruption and mismanagement of trust funds that had been expected to provide post-mining revenue streams for Nauru's citizens. Fiscal deficits were largely financed by offshore borrowings against the assets of the Nauru Trust Fund, which led to unsustainable levels of public debt. Reserves at the Bank of Nauru were drawn down to the point where it could no longer meet its obligations to depositors, and it effectively ceased operating in 1998. The collapse of the Bank of Nauru was preceded by capital flight and resulted in the loss of significant personal wealth of Nauruan citizens.
10. Nauru remains heavily indebted. The government has established a debt management strategy to deal with this burden, with the priority of paying off external debts. All creditors have been contacted, and debt forgiveness or write down arrangements have been negotiated with some.
11. In the absence of phosphate and trust fund revenues, Nauru now relies largely on foreign aid and to a much lesser degree on some payments for fishing rights within its exclusive economic zone (EEZ). There were also some temporary economic benefits for Nauru from the establishment of the Australian offshore immigration processing centre for asylum-seekers, which the Australian Government closed in March 2008.
12. According to ADB statistics, Nauru had a per capita GDP of AUD2,802 in 2010. There is about 90 per cent unemployment with 65 per cent of Nauru's population being under the age of 15 years. Nauru's private sector is very small and employs fewer than 300 people. A continuing challenge for the government is to promote non-government employment opportunities in Nauru.
13. Nauru imports well over 90 per cent of its foodstuffs and other basic goods, and sea and air transport options are very limited. In December 2005 the national airline's remaining aircraft was repossessed for non-payment, leaving Nauru dependent on chartered flights. In September 2006, with financial assistance from Chinese Taipei, a replacement aircraft re-established scheduled commercial flights to

Nauru and around the region under the new name of Our Airline. The provision of electricity and water, both dependent on imported fuel, is limited and unreliable.

14. The 2005 National Sustainable Development Strategy (NSDS) is a 25 year strategic plan that sets out the essential reforms required to achieve a positive future for Nauru. The NSDS was reviewed and revised in 2009. One of the key priorities of the NSDS is to achieve ‘stable, trustworthy, fiscally responsible government with transparent and accountable parliamentarians, cabinet and public service’. A focus for the government is to gradually reduce its reliance on donor support by rationalizing expenditure and building up alternative long-term income streams.

### **Government and Political System**

15. Nauru is a republic with a unicameral Parliament consisting of 18 members elected at least triennially. Nauru is divided into 14 districts that are grouped into eight parliamentary constituencies. Nauru does not have a political party system as such. Most politicians are independents, although in recent years some have begun to form alliances. The voting age is 20 years. Parliament elects the President, who is both chief of state and head of government, from among its members. The President appoints a cabinet from among members of Parliament.
16. There is a small police force under civilian control. There are no armed forces. Australia provides national defence under an informal agreement.

### **Legal system (including courts)**

17. The hierarchy of legal instruments is the Constitution, acts of parliament, subsidiary legislation (regulations) derived from powers within Acts and then rules or by-laws. The *Interpretations Act 2011* sets out details of regulations and rules.
18. The Interpretations Act sets out that in cases where an Act requires the making of subsidiary legislation and does not specify who may make the subsidiary legislation, the subsidiary legislation may only be made by Cabinet. Subsidiary legislation is subject to a parliamentary disallowance process whereby subsidiary legislation must be tabled in Parliament within 6 sitting days of being gazetted. Parliament may, by resolution, disallow the subsidiary legislation or a provision of the subsidiary legislation.
19. The Interpretations Act also sets out provisions governing rules and by-laws. In cases where an Act contains a power for a person, other than the President or a Minister, to make rules or by-laws, all rules or by-laws made under the power must be (a) signed by the person or body authorised by it to sign them; and given to the Minister administering the provision containing the power for notification in the Gazette. The Minister may consider and recommend changes, which are not binding on the person or body issuing the rules or by-laws.
20. Section 51 of the Interpretations Act sets out that any relevant treaty or other international agreement to which Nauru is a party may be considered when interpreting a written law or statutory instrument in order to: (a) resolve an ambiguous or obscure provision of the law; or (b) confirm or displace the apparent meaning of the law; or (c) find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable.

21. For its size, Nauru has a relatively complex system of courts. The Supreme Court, headed by the Chief Justice of Nauru (a retired Australian judge who resides off island and travels to the island a few times a year), is the highest court in Nauru and may hear constitutional issues. Cases can be appealed to a two-judge Appellate Court. Parliament cannot overturn court decisions, but Appellate Court rulings can be appealed to Australia's High Court; in practice, however, this rarely happens. Lower courts consist of the District Court and the Family Court, both of which are headed by a Resident Magistrate, who also is the Registrar of the Supreme Court. Finally, there also are two administrative tribunals: the Public Service Appeal Board and the Police Service Board presided over by the Chief Secretary and Commissioner of Police respectively.
22. Ratified conventions or treaties that Nauru is party to do not form part of domestic law directly. A treaty to which Nauru has expressed its consent to be bound is not automatically applicable, but relies on domestic legislation being enacted to give the treaty the force of law domestically.

### **Structural Elements for Ensuring an Effective Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) System**

#### *Transparency and good governance*

23. Nauru was not rated in Transparency International's (TI) 2010 Corruption Perceptions Index. A 2004 TI report on Nauru (the most recent available) found that although issues of corruption and governance have been the subject of some heated parliamentary debate in Nauru, little has been done to control corruption. Aspects of traditional culture, especially gift giving and the privileges of elders, contribute to this climate of ambivalence. Other aspects of Nauruan society, like the extensive relationship amongst many Nauruans (for every five Nauruans two are related in some way), may also discourage serious investigations and the potential apprehension of corrupt individuals. It is common for people to go to their Members of Parliament to ask for money and other favours.
24. The most significant issue for Nauru is the reputation damage caused by its past practice of providing "no questions asked" registration of offshore financial institutions, which resulted in the laundering of billions of dollars of criminal proceeds by organised crime groups (Russian and others) and severely tarnished Nauru's international reputation. The international community identified Nauru as a safe haven for criminal proceeds and Nauru was blacklisted by the FATF in 2000. Nauru remained on the FATF list of non-cooperative countries and territories (NCCT) until December 2003 when significant AML reforms were matched with a high-level commitment made by Nauru to cease the registration of off-shore financial institutions. Despite the AML reforms and other positive steps taken by Nauru since, Nauru's reputation remains damaged and it will take concerted and sustained efforts by the Nauruan government to reverse that reputation.
25. Corruption remains a problem in Nauru<sup>8</sup>. Nauru's biggest criminal case in recent history involved major fraud committed by a government official. There are also recurring allegations of corrupt conduct by politicians. In 2010 the Nauru Police Force (NPF) and the Australian Federal Police

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<sup>8</sup> Freedom House, *Freedom in the World 2010 - Nauru*, 1 June 2010.

(AFP) investigated allegations of foreign bribery of local politicians<sup>9</sup>, although no charges were laid as a result of those investigations, which were closed in September 2011.

26. In November 2011, Nauru's then President Marcus Stephen resigned amid ongoing allegations of corruption (claims he described as "unwarranted and mischievous"), pre-empting a motion of no confidence against him. He was replaced by Freddie Pitcher, a former Minister of Commerce and member of the governing party. Mr Pitcher in turn was replaced by Sprent Dabwido only five days later, after he lost a motion of no confidence in Parliament. Nauruan MPs run as independents, forging alliances that are typically fluid and elastic. In this climate, claims and counter-claims of graft are commonplace and more often than not they allege corrupt phosphate deals.
27. Another significant issue in this context is the lack of qualified personnel and resources for governance. Officials more often than not perform multiple duties. For example, the Director of Public Prosecutions also acts as Nauru's Secretary of Justice in the absence of the Secretary. The FIU Supervisor also serves as the Registrar of Corporations and is deputised to the ODPP when the Director of Public Prosecutions (DPP) is off-island. That practice can and does create conflicts of interest which need to be managed.

### ***Culture of AML/CFT Compliance***

28. Reflecting the very small scale of formal financial services on Nauru, there is not yet a strong culture of AML/CFT compliance in Nauru. Although a solid legal framework has been established through the enactment of relevant laws such as the AMLA 2008, the few reporting institutions in Nauru have not taken the necessary measures to comply with the legal requirements. This is largely due to a lack of guidance and education by the relevant authorities, in particular the FIU, which in turn suffers from severe capacity and resource constraints. The recent appointment of a permanent, capable and well-qualified FIU supervisor is a positive step but much work lies ahead and significant obstacles will need to be overcome to embed a culture of AML/CFT compliance in Nauruan financial institutions and DNFBPs.

### ***Anti-Corruption Measures***

29. To improve political stability and government accountability, Nauru launched a constitutional review in 2005. However, the package of recommendations put forward to the public such as including a directly elected president, making the state auditor an independent officer of Parliament, and requiring strict accounting for all public revenue and expenditures was rejected in a 2010 referendum. This included the *Constitution of Nauru (Parliamentary Amendments) Act 2009* which amended the Constitution by including a Leadership Code which will apply to Parliament, Government, judicial officers, public servants and heads of departments and officers of constitutional and statutory bodies. This Code aimed to deal with corruption and make such offices and officers accountable and transparent.

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<sup>9</sup> Nauru instability "Aussie phosphate plot", The Australian, 25 October 2010.

30. There are no stand-alone anti-corruption laws in Nauru and existing provisions in the Criminal Code are weak and out-dated. Nauru has implemented the *Members of Parliament (Register of Interests) Act 2004* as an anti-corruption measure for the legislative branch.
31. There is currently no Ombudsman or equivalent institution in Nauru, however the office of the Ombudsman was provided for in the Constitution of Nauru (Parliamentary Amendments) Act. This Act has yet to be given the force of law and requires amendment to enter into force, as well as administrative action to establish the office.
32. However, Nauru is currently in the process of large-scale reform of the *criminal code* to modernise the framework of criminal offences in Nauru. Nauru is also taking steps to consider ratifying the United Nations Convention Against Corruption (UNCAC) and plans to incorporate the UNCAC provisions in the new Crimes Act.
33. One of the key priorities of the Government's National Sustainable Development Strategy (NSDS) (reviewed and revised in 2009) is to achieve 'stable, trustworthy, fiscally responsible government with transparent and accountable parliamentarians, cabinet and public service'.
34. In March 2009, then President Marcus Stephen signed a memorandum of understanding with Kiribati and Tuvalu to establish a sub-regional audit support program for more uniform and timely auditing of public accounts. However, performance audits and evaluations remain uncommon in the public sector.
35. Nauru is also taking part in the Strengthening Public Financial Management in Pacific Developing Member Countries Initiative, which provides support for financial reporting. ADB, in collaboration with Australian Agency for International Development (AusAID), is supporting the preparation of a Public Expenditure and Financial Accountability Assessment Project for Nauru.

#### ***Efficiency of court systems and enforcement of judicial decisions***

36. Despite its small size Nauru has a comprehensive system of courts with a highly qualified Chief Justice (a former Australian Supreme Court judge) and resident magistrate. The efficiency of the system has improved since the arrival of the new magistrate and the DPP (a former prosecutor from Fiji). The number of adjournments has reduced, but delays still occur due to the unavailability of counsel and/or the fact that Nauru's only public defender is overburdened. The lack of legal capacity, especially a lack of prosecutors is the main issue hampering the efficiency of Nauru's court system. Prosecutors are limited to the DPP and the appointment of the Principal Legal Officer – who is also the FIU Supervisor – as a Public Prosecutor for the purpose of assisting with the functions of the ODPP when the DPP is travelling overseas or is unable to attend Court.
37. Most defendants in Nauru are released on bail. Many cases do not proceed to trial due to plea bargaining.

#### ***Ethical requirements for police, judges, etc***

38. The *Nauru Police Force Act (1972)* has provisions that cover issues relating to professional standards of police officers. The NPF has set up an Internal Investigations Unit (IIU) that actively pursues

allegations of police misconduct. The provisions of AMLA relating to confidentiality of information and more generally, the code of conduct for public sector employees bind IIU officers. The DPP is bound by the rules of evidence and privileged information and is subject to the laws of Nauru including AMLA 2008, POCA and CTTOC.

### *Systems for professional standards of accountants, lawyers, auditors*

39. There are no practising accountants in Nauru. The Chief Justice of Nauru is responsible for administration of the *Legal Practitioners Act 1972*.

## **1.2. General Situation of Money Laundering and Financing of Terrorism**

40. Nauru is a low crime jurisdiction from the perspective of profit driven crime. Nauru stated that the major sources of illegal proceeds in Nauru are petty theft and fraud (fraudulent activities of public and private sector employees). The major type of crime in general in Nauru is assault, in particular domestic violence. In 2010, a major case of government fraud came before the courts, involving the misappropriation of over AUD200,000 of Government funds by a public servant. Another case (which is currently before the courts) concerns the illicit exportation of cash (approximately AUD102,000) by a businessman and his brother. This case involves an offence against the border cash reporting provisions, and there is no suspicion that these funds are proceeds of crime. Most other cases involved very small amounts (up to AUD2000). All crimes before the courts involving proceeds of crime have been domestic cases.
41. Illicit fishing in Nauru's exclusive economic zone (EEZ) may have been a significant source of proceeds in the past, however statistics are limited and an estimate of past proceeds is not available. The Nauru Fisheries and Marine Resources Authority (NFMRA), which is the competent authority responsible for Nauru's fisheries and marine resources, has been working hard to deal with these illicit activities along with regional partners. Nauruan fisheries law is very comprehensive and based on model legislation. According to NFMRA officials almost no illegal activity in Nauruan waters has been detected recently, despite extensive satellite, electronic and other surveillance.
42. No comprehensive research has gone into crime trends in Nauru or the proceeds that are generated. There are no official estimates of the amount of funds being laundered in Nauru. The recent spike in crimes, such as theft, has been attributed by Nauru to its sharply deteriorated economic circumstances. The view of government and of the assessment team is that there are very little proceeds of crime in circulation in Nauru.
43. Theft of copper was identified as one profit generating crime type in Nauru; however recent regulatory action has largely reduced this vulnerability. Following an increase in copper theft on the island, the Nauruan government has recently banned the exporting of copper. Given the volume of legacy industrial infrastructure in Nauru, the trade in scrap metal has increased. The exportation of scrap metal requires a permit by the relevant Minister and exporters must be a registered entity under the *Business Licences Act 2011* and must show proof that the items it wishes to export are lawfully obtained and are legally theirs to export.
44. Nauru is now a low risk country for ML. The potential for off-shore financial institutions registered in Nauru to launder money through Nauru ceased after Nauru cancelled the registration of existing off-

shore financial institutions and stopped permitting further registrations. However, the small offshore centre including approximately 59 corporations and 15 trusts presents a risk that Nauruan corporate vehicles may be utilized in transnational ML schemes.

45. Nauru's almost negligible financial sector, combined with the low rates of profit driven crime means that it has relatively few vulnerabilities for ML. There is no commercial bank on the island, and the only form of formal money remittance occurs through one Western Union branch. Informal and ad hoc remittance services are offered by the bigger businesses on Nauru. These businesses are not being monitored or supervised for AML/CFT, although the existing AML guidance has been provided to them.
46. Nauru stated that there is no known terrorist financing activity in Nauru, but that it remains vigilant to potential circumstances that may be conducive to the financing of terrorism. This assessment of TF risk is supported by regional assessments. Nauru recognizes that border control is an important aspect of an effective AML/CFT regime. Nauru continues to work with its regional partners to ensure that its borders are not used for the illicit movement of finances that may contribute to terrorism. However, Nauru is limited in its capacity and resources.

### ***Risks and vulnerabilities***

47. Nauru has not yet undertaken any formal assessment of risks and vulnerabilities to ML/TF. There are no current plans to conduct such a risk assessment, which would be dependent on the provision of technical assistance and advice.
48. In the absence of a formal risk assessment, the authorities and the assessment team have identified some systemic risks and vulnerabilities, as follows:
  - Nauru's legacy offshore sector poses inherent risks for ML, as it exposes Nauruan legal persons to global ML schemes. Gaps in beneficial ownership information and AML compliance increase vulnerabilities.
  - A key risk is the registration of foreign corporations and the granting of trustee licences by the Nauru Agency Corporation (NAC) and the Nauru Trustee Corporation (NTC) respectively. Although less than 10 foreign corporations have registered in Nauru in the past five years, 59 foreign corporations remain registered. The NTC has issued about 15 trustee licences (albeit none in the past 10 years). Due to the lack of beneficial ownership information there is a risk that these legal persons or arrangements will be used in an ML or TF scheme, and that Nauru will not be able to provide adequate information on who is ultimately responsible for their criminal abuse.
  - Nauru is an entirely cash-based economy with no payment systems able to be used other than cash, which results in individuals and businesses couriering cash for normal economic activity.
  - There are severe resource constraints at key AML/CFT agencies, including a lack of trained and experienced staff, in particular in the FIU and the ODPP. This lack of resources results in the risk that the FIU, NPF and ODPP will not be able to detect, properly investigate and prosecute a case. Also, insufficient supervision of and provision of guidance to Nauru's reporting entities may have contributed to the absence of suspicious transactions reports to date.

- There is no dedicated anti-corruption legislation or agency in Nauru, although there are plans to incorporate the UNCAC provisions into a yet to be created new Crimes Act.
  - There is a lack of monitoring of money remittance services provided by formal and informal channels.
  - There is no legal framework for the NPO sector in Nauru, nor any regulatory oversight.
49. From the 1990s until 2004 Nauru conducted a ‘citizenship investment program’<sup>10</sup> which may have attracted criminal elements purchasing Nauruan citizenship and leaving Nauru vulnerable to its citizens committing crime, including money laundering. Although under section 11 of the *Naoero Citizenship Act 2005* Cabinet can revoke citizenship of an “investor citizen” in certain specified circumstances, Nauru does not have comprehensive records of the identities or exact number of persons who obtained Nauruan citizenship during the scheme. It is not clear that any of the citizenships gained through the investment program have been revoked under the powers at section 11. Nauru authorities report that foreign law enforcement has contacted Nauru in a number of instances where persons who obtained citizenship under this scheme had been involved in serious crime outside of Nauru.
50. Taken together, these risk factors and vulnerabilities indicate that, despite low levels of predicate crimes, there is some risk that foreign criminals in particular may exploit Nauru for ML and, possibly, TF purposes. However, if the key vulnerabilities were to be properly addressed and mitigated by the Nauru AML/CFT agencies, the overall risk of ML/TF activities occurring in Nauru in the future would be very low.

### **1.3. Overview of the Financial Sector and DNFBPs**

51. Apart from one licensed Western Union branch operating from a hardware store, there is no formal financial institution in Nauru and no payment systems available except for cash. Financial activities in Nauru are exclusively cash based. There are three informal remitters operating on a small scale through a few small businesses on the island<sup>11</sup>. None of the remitters (formal or informal) offer accounts or take deposits.
52. Most businesses and many individuals hold non-resident bank accounts in Australia and other jurisdictions and financial transactions are conducted via Internet banking. These transactions may include coverage for services and goods transacted on Nauru.

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<sup>10</sup> The *Naoero Citizenship Act 2005* sets out clear criteria for citizenship, which practically prevents the sale of Nauruan citizenship.

<sup>11</sup> There is no requirement in Nauru for informal remitters to be registered or hold a licence to conduct their activities.

**Table 1: Financial Institutions operating in Nauru – November 2011**

<b>Types of financial activities to which the FATF Recommendations apply</b>	<b>Types of financial institutions in Nauru that conduct these specified activities</b>
Acceptance of deposits / repayable funds from the public	NA
Lending	NA
Financial leasing	NA
<b>The transfer of money or value</b>	Western Union and informal remittance through local trading businesses
Issuing and managing means of payment (e.g. credit cards and debit cards, cheques, traveller's cheques, money orders and banker's draft, electronic money)	NA
Financial guarantees and commitments	NA
Trading in money market instruments (cheques, bills, CDs, derivatives etc.)	NA
Trading in foreign exchange	NA
Trading in exchange, interest rate and index instruments	NA
Trading in transferable securities	NA
Trading in commodity futures trading	NA
Participation in securities issues and the provision of financial services related to such issues	NA
Individual and collective portfolio management	NA
Safekeeping and administration of cash or liquid securities on behalf of other persons	NA
Otherwise investing, administering or managing funds or money on behalf of other persons	NA
Underwriting and placement of life insurance and other investment related insurance	NA
Money and currency changing	NA

**Table 2: Number and size of Financial Institutions operating in Nauru**

<b>Type of institution</b>	<b>No. of financial institutions (November 2011)</b>	<b>Total assets as of date (list currency)</b>
<b>Formal remittance companies</b>	1	NA
<b>Informal remittance companies</b>	3	NA

53. The Bank of Nauru has ceased trading, is in liquidation and will soon be wound up. There are no longer any insurance businesses operating or registered in Nauru. The *Insurance Act 1974* was repealed by the *Statute Law Revision Act 2011* and has not been replaced.

#### **Overview of the DNFBP Sector**

54. At the time of the on-site visit, the only DNFBPs operating were a single company service provider and a trust service provider. Both of these are wholly government owned.

**a. Casinos (including internet casinos)**

55. There are no casinos in Nauru. There are no online casinos or online betting businesses registered in Nauru.

**b. Real estate agents.**

56. There are no real estate agencies in Nauru as the vast majority of land is held under customary tenure recognized by customary law. A small amount of mostly state owned land has title under non-customary tenure governed by the *Lands Act 1976*. The President of Nauru must approve any lease or transfer of land. Land may not be transferred *inter vivos* to a Non-Nauruan citizen. Land is regulated by the Lands Act and the determination of ownership and benefits is administered by the Nauru Lands Committee, a statutory body established under the *Nauru Lands Committee Act 1956*.

**c. Dealers in precious metals.**

57. There are no dealers in precious metals in Nauru.

**d. Dealers in precious stones.**

58. There are no dealers in precious stones in Nauru.

**e. Lawyers, notaries, other independent legal professionals and accountants<sup>12</sup>**

59. Nauru's legal profession is very small and is regulated by the *Legal Practitioners Act 1973* for which the Courts of Nauru have jurisdiction. There are only three local lawyers, five expatriate lawyers and one pleader (legally trained advocates with permission to plead cases in the court). All work for the Government. The private bar is made up of one local lawyer and five pleaders. Opportunities for private law practice are very limited, given that there is no commercial bank or other financial institutions (apart from Western Union). The majority of civil legal matters involve land issues. The *Barristers and Solicitors (Accounts) Rules 1973* regulate accounts and other relevant financial activities undertaken by barristers and solicitors. There is only one local accountant in Nauru who works for the Government.

**f. Trust and company service providers**

60. All corporations (domestic or foreign) register through the Nauru Agency Corporation (NAC), which acts as the Nauruan representative in the registration process and is a state owned entity. NAC is a registered corporation agent under the provisions of the *Corporations Act 1972*. It provides a number of corporate services such as providing directors, initial subscribers or a resident secretary. NAC acts as the corporation agent, and Nauru Secretaries Incorporated (NSI), a related company, acts as the resident secretary.

61. The Nauru Trustee Corporation (NTC) is a statutory body established under the *Nauru Trustee Corporations Act 1972*. The NTC has granted licences to between 10 and 15 trustee companies. Its

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<sup>12</sup> This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat ML.

services are mostly utilised as a custodian, a registrar or a joint trustee in the management of trusts established in Nauru.

62. The government was unaware of the very few accountants or lawyers in Nauru having a role in the formation of private trusts formed under the common law. The government does not have any statistics on the number of private trusts formed under the Nauru Trustee Corporations Act.

#### **Other relevant Non-Financial Businesses and Professions**

63. One hotel operates a relatively large number (55) of slot machines. Bingo and betting on foreign horse races are the two other major gambling activities occurring in Nauru. At the time of the on-site visit the *Bingo Licensing Act 2008* regulated bingo<sup>13</sup>. Each bingo game was required to be conducted under a permit issued by the Secretary of Justice.

### **1.4. Overview of commercial laws / mechanisms governing legal persons & arrangements**

#### ***Corporations***

64. There were 59 corporations registered in Nauru through the Nauru Agency Corporation (NAC) at the time of the onsite visit. Overall, a significant portion of the 59 registered companies are formed by the Nauru government for managing state owned assets and enterprises. The rate of company formation in Nauru is low: since 2005, 23 corporations have been incorporated, with eight of those having been struck off, three pending for strike off and 10 remaining in good standing. Although the NAC's business activities are subject to AML/CFT laws in Nauru, AML/CFT supervision of the NAC has not yet commenced. The Registrar of Companies has an active oversight role in relation to compliance with requirements under the Corporations Act.
65. Domestic and offshore corporations are formed and registered in Nauru under the Corporations Act. The Corporations Act is comprehensive but out-dated and does not address modern day business practices such as online businesses.
66. The law identifies two concepts of corporations, the trading and holding corporation, both with limited liability. Corporations may apply for a licence to establish a trust and insurance company in accordance with the Corporations Act and the Insurance Act, although the Insurance Act has since been repealed (*Statute Law Revision Act 2011*). Grant of a trustee licence is contingent on adherence to the relevant laws of Nauru including the AML/CFT laws.
67. The Registrar of Corporations is responsible for the company registration process, keeping of the registry and other functions prescribed under the Corporations Act.
68. The Corporations Act, particularly sections 14 and 15, provides that parties wanting to form a corporation would have to subscribe their name to a memorandum and comply with requirements of the registration form. Incorporation can only be for lawful purposes. For a trading corporation, there

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<sup>13</sup> On 4 December 2011, the Gaming Act 2011, which seeks to regulate gambling establishments more broadly, replaced the Bingo Licensing Act.

must be at least two or more natural or legal persons subscribing to the memorandum and form requirements. All corporations must be limited by shares.

69. Other information required to be submitted to the Registrar includes the memorandum and articles (subject to the provisions of sections 10 and 23 of the Corporations Act). It is practice that along with these documents the NAC submits a copy of the application form which includes supporting documents particularly character references, financial records, a business plan and identification documents. The NAC is also required to submit a compliance certificate that declares complete compliance with the Corporations Act, which the Registrar may accept as sufficient evidence of such compliance.
70. The Corporations Act allows for both legal and natural persons to be owners or shareholders of a corporation (sections 4 and 14). As stated above, all corporations must be limited by shares and in particular, trading corporations must have at least two shareholders or persons subscribing to the memorandum.
71. Every trading corporation must have a registered director and every holding corporation at least one director. A legal person may be appointed as a registered director or act as director of a corporation.
72. Under sub-section 103(7) of the Corporations Act a director may be compelled to disclose information to an appropriate public officer in Nauru which he believes suggests that a fraud is being or is likely to be perpetrated by the corporation or by any of its members or directors or upon the corporation or any of its members.
73. Every corporation must have one or more secretaries, one of whom must be a resident secretary appointed by the responsible Minister. The resident secretary is responsible for compliance by the corporation with the requirements of the Corporations Act, maintenance of the corporation's records at the registered office, opening of the registered office to the public, and dealing with communications addressed to the corporation at its registered office (section 110).
74. All corporations must have a registered office in Nauru (section 101).
75. The register of directors and secretaries must be open for inspection by the public and any person may request a trading corporation to furnish them with a copy of the register, or any part thereof, but only in relation to names, addresses, number of shares held and amounts paid on shares (section 128).
76. The Corporations Act allows the inspection of the accounts of the corporation by directors and the Registrar (section 134). Any person may upon payment of the prescribed fee inspect any document filed or lodged with the Registrar in relation to a corporation or require any certificate issued under the Corporations Act (section 12).
77. The memorandum of incorporation must contain certain information such as the share capital, the subscribers to the memorandum, and the number of and class of shares they hold. Other information kept by the Registrar includes the situation of the registered office, particulars of the directors and secretaries and annual returns and the articles of incorporation (section 16).

78. Information regarding corporation accounts must be maintained by the corporation at its registered office and can be accessed by the Registrar or directors of the corporation. The registry of shareholders is also retained by corporations and is available for inspection by corporation members.
79. There is also an official Register of Titles and Transfers (maintained by the Registrar) where a member of a corporation may lodge for registration a share warrant accompanied by a request in the prescribed form (section 86). The information maintained in the register includes:
- the serial number of the request
  - the name of the corporation
  - the numbers of the shares and the class, if any or description thereof
  - the name of the beneficial owner thereof as set forth in the request, and
  - the number of the caveat, if any to which the entry is subject.

### ***Trusts***

#### *Private trusts - charitable trusts or trusts to benefit individuals or families*

80. Laws governing the formation and operation of private trusts in Nauru are based on English common law and on the *Foreign Trusts Estates and Wills Act 1972*. There is no obligation to register common law express trusts, charitable trusts or trusts to benefit individuals or families. With the exception of Purpose Trusts, there is no obligation to include trustee corporations, the NTC or any other parties in the formation of trusts. Nauru authorities are unaware of the number of such trust common law private trusts formed in Nauru. The government was unaware of the very few accountants or lawyers in Nauru having a role in the formation of private trusts formed under the common law. The government does not have any statistics on the number of private trusts formed under the Foreign Trusts Estates and Wills Act..

#### *Purpose Trusts (non-charitable)*

81. The Foreign Trusts Estates and Wills Act sets out controls, including registration requirements for the establishment of non-charitable Purpose Trusts. Section 6 sets out that any person may create a trust in Nauru, whether charitable or not. For non-charitable trusts at least one trustee must be a trustee corporation. Trusts are created by a deed or will situate in Nauru, which includes provisions for the persons (natural or legal) entitled to enforce the trust. Trust deeds, or variations, do not take effect until delivered to the NTC.
82. Section 7 sets out that purpose trusts formed under the act shall not apply to (a) any settlement, disposition or trust of any land or of any interest in any land where such land is situate in Nauru; or (b) any fund established by or under the *Nauru Phosphate Royalties Trust Ordinance 1968* or the *Nauru Phosphate Royalties (Payment and Investment) Act 1968*.
83. The Nauru Trustee Corporation Act establishes the Nauru Trustee Corporation (NTC) with functions to act as trustee for all purpose trusts under the Foreign Trusts, Estates and Wills Act.
84. Offshore trusts operating in Nauru are further regulated under section 73 of the Corporations Act, which provides for the creation of registered trustee corporations that may issue debentures to the public. Section 74 governs the contents of trust deeds. Trustee corporations established under section

73 must obtain a license from the government through the NTC. The application for license must set out the number of unit trusts to be issued under each license.

85. Eleven (11) trustee company licenses are in operation in Nauru, with a total of 14 unit trusts issued under the 11 licenses. All are formed on behalf of foreigners. No new trust licenses have been issued within the past 10 years.
86. Each trust company must file an annual return, which sets out the number unit trusts in operation, the unit trust management, and the formal beneficiary of the trust. Information on the settlors is not included. There is no requirement to lodge the ultimate beneficial owner of the unit trust.

## **1.5. Overview of strategy to prevent money laundering and terrorist financing**

### **a. AML/CFT Strategies and Priorities**

87. Within its limited capacity Nauru has taken a number of positive steps to strengthen its AML/CFT regime. Nauru has:
- passed laws including the *Anti Money Laundering Act 2008* (AMLA), the *Counter Terrorism Transnational Organised Crime Act 2004* (CTTOC) and the *Proceeds of Crime Act 2004* (POCA);
  - discontinued the registration of offshore banks since 2004;
  - instituted a Directorate of Payment (Revenue Office) process when dealing with public funds;
  - established the Financial Intelligence Unit (FIU);
  - worked to build the investigative capacity of the Nauru Police Force (NPF); and
  - enhanced coordination between other key agencies and stakeholders.
88. Nauru's key AML/CFT coordination mechanism is the National Coordinating Committee on Anti-Money Laundering and Countering the Financing of Terrorism (NCC). It was established in August 2004 by administrative decision of the Cabinet to coordinate Nauru's AML/CFT measures and actions. The key objectives of the NCC are to:
- develop national policy on measures to counter money laundering, the financing of terrorism, transnational crime, illicit trade in weapons of mass destruction, arms and light weapons, and related matters;
  - co-ordinate national policies with regional and international initiatives; and
  - agree upon an action plan for AML/CFT in Nauru.
89. To increase the transparency and accountability of financial transactions the Government recently issued a Regulation under section 14 of the *Business Licences Act 2011*.

## **b. The Institutional Framework for Combating ML and TF**

### **Ministry of Justice and Border Control**

90. The Department of Justice and Border Control is the lead ministry for AML/CFT activities in Nauru and is responsible for the FIU, the Registrar of Corporations, the Registrar of Businesses and the Office of the Public Prosecutor and Customs.

#### ***Financial Intelligence Unit (FIU)***

91. The FIU is established through section 7 of the AMLA. The Supervisor (Head of) the FIU is appointed by Cabinet. Nauru's FIU has a dual role: it is responsible for receiving, analysing and disseminating suspicious transaction reports (section 8 of AMLA), as well as monitoring and ensuring AML/CFT compliance by financial institutions, including DNFBPs (section 12 of AMLA).

#### ***Registrar of Corporations***

92. The Registrar of Corporations is responsible for the company registration process, keeping of the company registry and other functions prescribed under the *Corporations Act 1972*. At present the functions of FIU Supervisor and Registrar of Corporations are held by the same person.

#### ***Registrar of Businesses***

93. The Registrar of Businesses is responsible for the business licensing process and other functions prescribed under the Business Licenses Act.

#### ***Prosecution authorities***

94. The Office of the Director of Public Prosecutions (ODPP), the Secretary for Justice and Border Control or the relevant Minister are responsible for initiating prosecutions, depending on which remedy or action is being sought.

### **Ministry of Finance**

#### ***Directorate of Payment (Revenue Office)***

95. The Directorate of Payment (Revenue Office) is responsible for financial accountability and transparency. The Revenue Office has taken on a number of the roles that were previously conducted by the Bank of Nauru in relation to government funds. This includes receiving and disbursing payments.

96. There is no functioning central bank in Nauru. The Bank of Nauru is currently in the process of being liquidated.

#### ***Directorate of Audit***

97. The Directorate of Audit has responsibility for examining the accounts of all Government ministries and departments, as well as state owned enterprises (SOEs). It reports to Parliament on how those entities have used the resources allocated to them through the estimates process.

### **Ministry of Home Affairs**

98. The Ministry of Home Affairs is responsible for the Nauru Police Force (NPF).

#### ***Nauru Police Force (NPF)***

99. The NPF is the principal law enforcement and ML/TF investigating agency in Nauru. It works closely with Nauru's ODPP.

### **Ministry of Foreign Affairs**

100. The Ministry of Foreign Affairs is responsible for international treaties and agreements.

### **Other relevant authorities**

#### ***Agencies responsible for licensing, registering or otherwise authorizing financial institutions***

101. There is no ministry or agency responsible for licensing, regulating and supervising financial institutions in Nauru. The FIU is responsible for AML/CFT supervision of all financial institutions, including DNFBPs.

#### ***Supervision of lawyers and accountants***

102. The Judiciary (Chief Justice) is responsible for the supervision of the legal profession. There are no practising accountants in Nauru.

#### ***Supervision of non-profit organizations (NPOs)***

103. There are currently no laws or policies relating to the NPO sector in Nauru, nor is there any supervision of NPOs. Nauru advised that relevant legislation is on the legislative agenda.

### **c. Approach Concerning Risk**

104. Nauru has not adopted a risk-based approach to AML/CFT supervision. It has not identified lower risk financial or DNFBP sectors or decided to limit or exempt the application of certain FATF Recommendations.

### **d. Progress since the Last Mutual Evaluation**

105. This is Nauru's first mutual evaluation.

## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **2.1 Criminalization of Money Laundering (R.1 & 2)**

#### **2.1. Description and Analysis**

##### ***Legal Framework***

106. The *Anti Money Laundering Act 2008* (AMLA) contains the ML offence for Nauru.

##### ***Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):***

107. The offence of ML is criminalised under section 3 of the AMLA. Section 3 of the AMLA provides that it is an offence to engage in money laundering. The maximum penalty for ML is 15 years imprisonment and a AUD50,000 fine.

108. Under section 2, “money laundering” (as defined under section 2) means:

- (a) acquiring, possessing or using property knowing or having reasonable grounds to believe that it is or represents proceeds of crime;
- (b) concealing, disguising, converting, transferring, removing or bringing into Nauru property knowing or having reasonable grounds to believe that it is or represents proceeds of crime; or
- (c) entering into or becoming concerned in an arrangement knowing or having reasonable grounds to believe that it facilitates (by whatever means) the acquisition, retention, use or control of proceeds of crime by or on behalf of another person.

109. Subsection 2(a) complies with the requirements under Article 6 subparagraph 1(b)(i) of the Palermo Convention. Subsection 2(b) merges the requirements of Article 6 subparagraphs 1(a)(i) and (ii). The basic elements are there, but for the conversion or transfer of property, there is no requirement to prove that it is “for the purpose of concealing or disguising the illicit original of the property”, as provided in the Palermo Convention.

110. The wording under subsection 2(c) does not follow either the Vienna or Palermo Convention, it is not clear whether it is trying to cover ancillary offences.

111. Section 3 contains the physical and material elements of the ML offence as required under the Vienna and Palermo Conventions. The section has not been tested.

##### ***The Laundered Property (c. 1.2):***

112. “Property” (as defined under section 2) includes money and all other property real or personal, including things in action and other intangible or incorporeal property wherever situate, including any interest in such property. A more comprehensive definition is required to fully cover all instruments evidencing title to property as required under the convention.

##### ***Proving Property is the Proceeds of Crime (c. 1.2.1):***

113. There is no specific provision that when proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence. But “proceeds of crime” means

any property derived from or obtained directly or indirectly through the commission of any unlawful activity.

114. “Unlawful activity” is defined to mean:

“any activity which under any law anywhere is a crime, other than a law relating to the non-payment or avoidance of any form of taxation, and is punishable by more than twelve months imprisonment, except where in the opinion of the Court such law or the punishment thereof is unconscionable or excessive and ought not be enforced, and includes in relation to any such activity, conspiracy, incitement, attempting to commit, and aiding, abetting, counselling, or procuring the commission thereof.”

115. One possible reading of the definitions is that it is not necessary that a person be convicted of a predicate offence. There is, however, no case law on this. A specific provision will assist in the enforcement of the ML offence.

***The Scope of the Predicate Offences (c. 1.3)***

**Table 3: Relevant predicate offences for each of the FATF designated categories of offences.**

<b>Categories of predicates</b>	<b>Provisions under statutes in Nauru</b>
Participation in an organized criminal group	S 55 CTTOC
Terrorism, including FT	S 10A CTTOC (Terrorism); S 10 CTTOC (TF)FT)
Trafficking in human beings and migrant smuggling	SS 57 – 58 CTTOC (Human trafficking); SS 64 CTTOC (Migrant smuggling)
Sexual exploitation, including sexual exploitation of children	S 59 CTTOC
Illicit Trafficking in Narcotic Drugs & Psychotropic Substances	Part 2 <i>Illicit Drugs Control Act 2004</i>
Illicit arms trafficking	S 14 CTTOC (Provision of weapons to terrorist groups); S9A CTTOC (Offences in relation to nuclear, chemical and biological weapons) <u>BUT</u> no provision for trafficking of general ordinary arms.
Illicit trafficking in stolen and other goods	Chapter XLI Criminal Code (Receiving property stolen or fraudulently obtained by like offences) <u>BUT</u> the Criminal Code is out-dated with no provision re dealing of stolen goods.
Corruption and bribery	S 56 CTTOC (Corruption of public officials); SS 103 – 104 Criminal Code (Corruption in relation to election) <u>BUT</u> there is no provision for private corruption.
Fraud	Chapter XL Criminal Code (Obtaining property by false pretences: cheating); Chapter XLII Criminal Code (Frauds by trustees and officers of companies and corporations: false accounting) <u>BUT</u> relevant provisions in the Criminal Code are out-dated and S 427 Criminal Code refers to the currency of “pounds” which is not the currency of Nauru.
Counterfeiting currency	Chapter XVIII Criminal Code (out-dated offences relating to the coin); <u>BUT</u> there is no provision for counterfeiting of banknotes or currency in general.
Counterfeiting and piracy of products	S 503 Criminal Code (Counterfeiting trade marks). <u>BUT</u> no provision for trafficking in counterfeited goods and infringement of copyrights.
Environmental Crime	S 49 CTTOC (Offences relating to nuclear material) <u>BUT</u> there is no provision against other ordinary environmental crime.
Murder, grievous bodily	Chapter XXVIII Criminal Code (Homicide: Suicide: Concealment of Birth)

harm	Chapter XXIX Criminal Code (Offences endangering life or death)
Kidnapping, illegal restraint and hostage – taking	S 354 Criminal Code (Kidnapping); S 355 Criminal Code (Deprivation of liberty); S 47 CTTOC (Offence of hostage taking) <u>BUT</u> the Criminal Code is out-dated. Also, S 354 refers to “kidnapping” to make a person work against his will, rather than a general kidnapping provision.
Robbery or theft	Chapter XXXVI (Stealing); Chapter XXXVII (Offences analogous to stealing) Chapter XXXVIII (Stealing with violence: extortion by threats) <u>BUT</u> the relevant provisions in the Criminal Code are out-dated.
Smuggling	Not a serious crime by definition in Nauru.
Extortion	S415 Criminal Code (Demanding property by written threats) S 416 Criminal Code (Attempts at extortion by threats) S 417 Criminal Code (Procuring execution of deeds by threats)
Forgery	Chapter XLIX Criminal Code (Punishment of forgery and like offences) <u>BUT</u> the Criminal Code is out-dated
Piracy	Chapter XI Criminal Code (Piracy) <u>BUT</u> the Criminal Code is out-dated with references to British subject and British ship.
Insider trading and market manipulation	No provision for insider trading and market manipulation.

116. It should be noted that the Criminal Code (titled the Queensland Criminal Code<sup>14</sup>) is out-dated. Work is ongoing to substantially revise the Criminal Code.

***Threshold Approach for Predicate Offences (c. 1.4):***

117. AMLA uses a threshold approach for predicate offences. Through the definition of “unlawful activity”, all “crimes that are punishable by more than twelve months’ imprisonment” are caught as predicate offences.

***Extraterritorially Committed Predicate Offences (c. 1.5):***

118. The extraterritoriality of committed predicate offences is captured by the definition of “unlawful activity” under which “any activity which under any law anywhere is a crime.” This definition has not been put to the test in Nauru. The assessment team raised some questions regarding whether the section only applies to anywhere within Nauru or goes beyond the territory of Nauru. There is also no case law on this. Case law or a clearer provision will provide clarity and support effective enforcement.

***Laundering One’s Own Illicit Funds (c. 1.6):***

119. Self-laundering is covered by the definition of the “proceeds of crime” in the AMLA. Paragraph (b) of the definition states that “any payments or rewards received by a person at any time in connection with any unlawful activity carried on by that person or another person”.

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<sup>14</sup> The Queensland Criminal Code became the law of Nauru by enactment of the *Laws Repeal and Adopting Act 1922*.

***Ancillary Offences (c. 1.7):***

120. The ancillary offences are covered under the definition of “unlawful activity” in the AMLA. It “includes in relation to any such activity, conspiracy, incitement, attempting to commit, and aiding and abetting, counselling, or procuring the commission thereof”.

***Additional Element—If an act overseas which do not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML (c. 1.8):***

121. Section 6 of AMLA provides for the extraterritorial jurisdiction to prosecute ML offences in Nauru irrespective of whether the predicate offence that occurred in another country does not constitute an offence there:

Any act —

- a) by a citizen of Nauru anywhere;
- b) by a corporation established or incorporated in Nauru, or any officer of such corporation, anywhere;
- c) by a person on a ship or aircraft registered in Nauru; or
- d) by a person outside Nauru with intent to do that act within Nauru shall, if it would be an offence by that person in Nauru under the provisions of this Act be an offence under those provisions.

***Liability of Natural Persons (c. 2.1):***

122. The offence of ML under section 3 applies to natural persons who knowingly engage in ML activity.

***The Mental Element of the ML Offence (c. 2.2):***

123. The mental element of the ML offence is contained in the definition of ML in section 2: “knowing or having reasonable grounds to believe”. This phrase appears to allow the knowledge of the defendant to be inferred or attributed to him or her from objective factual circumstances.
124. Nauru authorities were unable to provide any case law to confirm that the mental state of a person can be inferred from objective factual circumstances.

***Liability of Legal Persons (c. 2.3)***

125. Under subsection 3(2), the offence of ML applies to body corporate or unincorporated body of persons. The maximum penalty is a fine of AUD250,000.

***Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings & c. 2.4):***

126. The liability of legal persons under the AMLA does not appear to preclude possible parallel criminal, civil or administrative proceedings.

*Sanctions for ML (c. 2.5):*

127. The maximum penalty for ML for a natural person is 15 years' imprisonment and or a fine of AUD50,000. For a body corporate or an unincorporated body of persons, the maximum penalty is AUD250,000.

*Statistics (applying R.32) and Analysis of Effectiveness*

**Table 4: Statistics of ML prosecutions**

	2008	2009	2010	2011	Total
ML investigations	1	1			
ML charges – persons / counts	1	5			6
ML convictions	0 <sup>15</sup>	0			

128. Details of all charges laid for property crime in Nauru, including ML, are included at section 2.6 of this report.

129. Effectiveness of implementation has not yet been comprehensively tested. While two investigations resulted in six ML charges, all charges were amended to receiving stolen property. A number of fraud, stealing and forgery cases with a value of over AUD100,000 have gone through the courts, but were not subject to ML charges. Some property was confiscated in one of those cases.

130. No cases of ML have been adjudicated through by the courts.

**2.1.2. Recommendations and Comments**

131. Nauru has a reasonably comprehensive legal framework for criminalising ML. However, its application is limited by the coverage of designated categories of predicate offences. One reason of the shortcoming is due to the Criminal Code, which was originally enacted in 1899, being out-dated. The Evaluation Team was informed on site that Nauru is undergoing a full review of the Criminal Code, which is expected to be completed in 2013. There is also some uncertainty in the wording of the legal provisions which may be open to arguments and impact on their enforcement. Case law on the ML offence would help to clarify some of these uncertainties.

- Nauru should amend relevant legislation to:
  - ensure coverage of the widest scope of predicate offences.
  - define 'property' to fully cover all instruments evidencing title to property as required under the convention.
- Nauru should provide case law or consider amending legislation to:
  - confirm extraterritorially of committed predicate offences

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<sup>15</sup> In both cases in 2008 ML charges were amended to receiving stolen property

- clarify that when proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence
- Nauru should effectively use the AMLA to ‘follow the money’ associated with crime.

### **2.1.3. Compliance with Recommendations 1 & 2**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.1</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There are gaps in the coverage of domestic predicate offences – no smuggling and no insider trading; some gaps with arms trafficking, corruption, fraud, piracy/counterfeiting, environmental offences, kidnapping</li> <li>• Property does not extend to all instruments evidencing title to property</li> <li>• Clarification (case law or amended legislation) is needed for extraterritorially committed predicate offences ML as a standalone offence absent a predicate conviction</li> </ul>
<b>R.2</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Effectiveness has not been established</li> </ul>

## **2.2. Criminalization of Terrorist Financing (SR.II)**

### **2.2.1. Description and Analysis**

#### ***Legal Framework***

132. *The Counter Terrorism and Transnational Organised Crimes Act 2004 (CTTOC)* is Nauru's primary counter terrorism legislation and includes offences of terrorist financing.

#### ***Criminalization of Financing of Terrorism (c. II.1):***

133. Section 10 of CTTOC criminalizes TF:

(1) A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act.

Penalty: imprisonment for life.

(2) A person must not provide or collect, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity.

Penalty: imprisonment for life.

(3) In a prosecution for an offence against subsection (1), it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.

134. Section 11 of the CTTOC sets out an additional provision for criminalising financing of a terrorist organisation or individual terrorist in the case where the Minister has prescribed a UN listed entity under section 4 or designated a terrorist entity under sections 5. Section 11 of CTTOC sets out that:

(1) A person must not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a specified entity.

Maximum penalty: imprisonment for 20 years.

(2) Subsection (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

135. Entity is defined in section 2 to mean a person, group, trust, partnership, fund or an unincorporated association or organization. A 'specified entity' is defined under section 2 as one designated as such by the Justice Minister.

136. "Property" is defined under section 2 and complies with the requirement under the TF Convention. It applies to "any" property, therefore includes both legitimate and illegitimate source.

137. By subsection 10(1), TF in relation to property to be used to carry out a terrorist act is covered. "Terrorist act" is defined under section 3 and complies with the requirements. The CTTOC creates offences to implement the nine counter terrorism conventions and the definition at subsection 3(2)

follows the language of the TF Convention. The provision does not require the property to be actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

138. Criminalisation of financing a terrorist organisation or an individual terrorist is only possible in cases where Nauru has proscribed such entities, which is a significant limitation. It does not appear that the Minister would be able to proscribe an organisation or individual with retrospective effect.
139. The scope of terrorist organisations or individual terrorists that could be proscribed under section 5 of the CTTOC broadly meets the FATF standard. Subsection 5(1) provides that entities may be proscribed when the Minister has reasonable grounds to believe that:
- (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or
  - (b) an entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned in paragraph (a); or
  - (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).
140. Subsection 10(2) and section 11 apply the offence of TF in relation to specified entities that are prescribed under section 4 (UNSCR 1267) or declared under section 5 by the Minister for Justice and Border Control. This may include organisations and individuals. At the time of the onsite visit, and the period immediately thereafter, no terrorist organisation or individual had yet been prescribed or declared and the TF provisions in relation to terrorist organisations and individual terrorists were not in operation.<sup>16</sup>
141. The available TF provision in relation to collecting or providing funds to an individual terrorist is limited to the mechanism at section 4 to designate a terrorist entity. This could include both UNSCR listed entities and additional terrorists designated by the Minister.
142. Section 75 provides for attempt to commit an offence under CTTOC. But it is unclear what the meaning of the provision under the section is: “provided that the person’s conduct is more than merely preparatory to the commission of the offence”. The section has not been tested.
143. Sections 72 to 74 provide for the ancillary offences of aiding, abetting, counselling, procuring, inciting and conspiring to commit an offence under CTTOC.

***Predicate Offence for Money Laundering (c. II.2):***

144. By definition of “unlawful activity”, all “crimes that are punishable by more than twelve months” imprisonment are predicate offences. Therefore, TF is a predicate offence to money laundering.

***Jurisdiction for Terrorist Financing Offence (c. II.3):***

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<sup>16</sup> On 30 May 2012, under subsection 4(2) of the CTTOC, the Justice Minister prescribed the UNSCR 1267 Al Qaida Sanctions List as updated 10 May 2012. This would have the effect of bringing section 11 into operation to a limited degree. Under the APG Mutual Evaluation procedures, as this took place outside of the period immediately after the onsite visit, and as such it is not considered for the purpose of ratings.

145. Section 71 of the CTTOC sets out the jurisdiction for TF offences in Nauru:

Unless otherwise provided for under this Act, Proceedings may be brought for an offence under this Act:

(a) if the act or omission:

- (i) is committed in Nauru; or
- (ii) is committed on board a ship or aircraft registered in Nauru; or
- (iii) is committed by a person who is in Nauru; and

(b) whether or not the act or omission constituting the offence is committed in or outside Nauru, if the act or omission:

- (i) is committed by a citizen of Nauru or a citizen of any country who is ordinarily resident in Nauru; or
- (ii) is committed in order to compel the Government of Nauru to do or abstain from doing any act; or
- (iii) is committed against a citizen of Nauru; or
- (iv) is committed by a person who is, after the commission of the offence, present in Nauru; or
- (v) is intended to be committed in Nauru; or
- (vi) originates in or transits Nauru.

146. “Terrorist acts” are defined under section 3 to include acts or omissions in or outside Nauru. In relation to jurisdictions over financing an individual or organisation, at the time of the onsite visit and immediately thereafter, no local or overseas terrorist organisations had been prescribed or declared.

***The Mental Element of the TF Offence (applying c. 2.2 in R.2):***

147. The mental element under subsections 10(1) and (2) is “intending, knowing or having reasonable grounds to believe”. This phrase appears to allow the knowledge of the defendant to be inferred or attributed to him or her from the circumstances of the case.

148. Nauru authorities were unable to provide case law to confirm that the mental state of a person can be inferred from objective factual circumstances.

***Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):***

149. Section 76 covers the liability of a company under CTTOC, highlighting that the act applies to a company the same way that it applies to an individual. There is, however, no definition of “company” in CTTOC or in the *Interpretation Act 1971*. The *Corporations Act 1972* recognises companies incorporated outside of Nauru. It is unclear whether Section 76 of the CTTOC only applies to foreign companies or also to corporations registered in Nauru.

***Sanctions for FT (applying c. 2.5 in R.2):***

150. The maximum penalty under subsections 10(1) and (2) are both life imprisonment, but no TF cases have yet been tried in Nauru.

## Statistics (applying R.32) and Analysis of Effectiveness

151. Nauru has no TF cases so far so effectiveness of implementation has not been tested yet.

### 2.2.2. Recommendations and Comments

- Criminalisation of TF in relation to organisations and individual terrorists should be comprehensively covered in keeping with the FATF standards, without requiring prescriptions to take place.
- Clarification should be provided on how section 76 of the CTTOC applies to corporations registered outside of Nauru.
- To ensure some coverage of terrorist groups and individuals, Nauru should take immediate action to prescribe entities under section 4 or declare entities under section 5. Otherwise, subsection 10(2) cannot be utilized.

### 2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"><li>• No provision for criminalising funding terrorist organisations or individual terrorists, except for those prescribed by the Minister.</li><li>• The absence of prescription of any terrorist group or individual at the time of the onsite visit resulted in a complete gap for groups and individuals</li><li>• There is some uncertainty regarding the scope of criminal liability for legal persons</li></ul>

## 2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1. Description and Analysis

#### Legal Framework:

152. The *Proceeds of Crime Act 2004* (POCA) and the AMLA provide for confiscation proceedings, including provisional measures. The *Customs Act 1921* also provides for the confiscation of prohibited goods.

#### Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):

#### POCA

153. Under section 17 of POCA, the Court may make a forfeiture order against “tainted property” in relation of to a person’s conviction of a “serious offence” on the application of the Secretary for Justice (SJ) (which includes Director of Public Prosecutions (DPP) by definition under section 2). “Serious offence” is defined (section 3) to include any offence in or outside Nauru which is punishable by imprisonment for not less than 12 months and that includes ML and FT.

154. Under subsection 11(2), the SJ or DPP may have to make the application before the “end of the relevant application period for the conviction”. The meaning of “relevant application period for the conviction” is unclear.

155. When considering whether to make the forfeiture order, the court may take into account various matters (subsection 17(4)). There is no case to show how the court exercises that discretion.

#### AMLA

156. Under subsection 62(1) of AMLA, the court may make a forfeiture order against “tainted property” in respect of an “unlawful activity” of a convicted person on a balance of probabilities. “Unlawful activity” means offences punishable by more than 12 months.

157. When considering whether to make the forfeiture order, the same facts as in POCA (subsection 17(4)) should be taken into account (subsection 62(4)).

#### Customs Act

158. The Customs Act provides for forfeiture of items that represent a ‘prohibited export’ on an administrative basis. Subsections 218(3) and 214(n) provide for the forfeit of currency which is exported (or attempted to be exported) without lawful approval on an administrative basis.

#### ***Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):***

#### POCA

159. “Tainted property” under POCA may be inferred under certain circumstances (subsection 17(2)) to be proceeds from (paragraph 17(2)(b)) or instrumentalities used in (paragraph 17(2)(a)) the commission of the serious crime and property of corresponding value (paragraph 17(2)(c)). But it is restricted to property found in the person’s possession or under his control. There is also no provision for instrumentalities to be used in the commission of a serious offence.

160. Under section 26, on the application of SJ/DPP, the court may make a pecuniary penalty order against a convicted person for his benefits from the serious offence. “Benefit” is defined under section 4 to include property held by a third party (subsection 4(b)).

161. There is, however, no provision to cover benefits derived indirectly from the proceeds and property held by a third party or instrumentalities to be used in the commission of a serious offence.

#### AMLA

162. “Tainted property” under AMLA (section 2) is defined to mean property that is intended for use in, or used in, or in connection with the commission of unlawful activity. Subsection 62(2) provides for certain circumstances where “tainted property” may be inferred. But it is only restricted to property found in the person’s possession and acquired by the person near the time of the commission of the offence. The provisions cover proceeds from (paragraph 62(2)(b)), instrumentalities used in or intended to be used in (paragraph 62(2)(a)) the commission of the “offence”, rather than “unlawful activity” (62(1)). It is unclear how the court would resolve this inconsistency between subsections 62(1) and (2).

163. Under section 67 of the AMLA, on the application of the DPP, the court may make a pecuniary penalty order against a convicted person for his benefits from the unlawful activity.

164. Like POCA, there is no provision to cover property derived indirectly from proceeds of crime. Nor is there provision under the AMLA to cover property held by a third party.

***Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):***

165. Under section 50 of the POCA, the court may make a restraining order against property under certain conditions to prevent the dealing or disposal of the property.

166. Under section 54 of the AMLA, the court may make a freezing order (or sometimes referred to as restraining order within AMLA) against property held by the defendant or any other person to prevent the dealing or disposal of the property.

***Ex Parte Application for Provisional Measures (c. 3.3) :***

167. Under section 48 of the POCA, the application for a restraining order may be made ex parte by the SJ or the Director of Public Prosecutions (DPP). Under section 54(2) of the AMLA the application for a freezing or restraining order may be made ex-parte by the DPP.

***Identification and Tracing of Property subject to Confiscation (c. 3.4):***

168. Under sections 35 and 36 of the POCA, the police may search and seize anything believed to be tainted property under a search warrant. Part 6 of AMLA provides the police various powers to identify and trace tainted property: search and seizure, production of documents, and monitoring orders.

***Protection of Bona Fide Third Parties (c. 3.5):***

169. Third party interest is protected under section 20 of the POCA and under subsection 66(b) of the AMLA.

***Power to Void Actions (c. 3.6):***

170. Before making a forfeiture order under section 17 of the POCA, the court may set aside any conveyance or transfer of property (section 18). Similar provision is found in section 63 of AMLA.

***Statistics (applying R.32) and Analysis of effectiveness***

171. Nauru has two confiscation cases so far. The confiscation powers under POCA have been used in one case of a large-scale fraud for property valued at approximately AUD8,800. Administrative confiscation was pursued in one case under the *Customs Act 1921* for cash in the amount of approximately AUD102,000 in relation to a failure to declare cross border movement of cash. Nauru does not have a well-established system for statistics yet.

**Table 5: Property frozen / seized / confiscated**

Action	2007	2008	2009	2010	2011	Total
Freezing / Seizing actions				2		
Value of property frozen / seized				AUD200,000		
Confiscation actions				2		
Value of property confiscated				AUD110,000		

**2.3.2. Recommendations and Comments**

172. Both POCA and AMLA provide for a rather comprehensive legal framework for confiscation, with certain individual shortcomings as identified specifically above in the analysis of the two legislations. There are similarities and certain inconsistencies, which may cause difficulties in enforcement. Such difficulties may be the reason why they have never been used. Due to the size of Nauru’s jurisdiction and the limited number of legal professionals, and limited resources and expertise, a single straightforward comprehensive legislation is preferable for enforcement purposes.

173. Nauru should:

- Ensure that proceeds from the wide range of predicate offences is subject to confiscation;
- Cover property indirectly derived from proceeds of crime.
- Ensure that property held by third parties is subject to confiscation.
- Effectively use the POCA and AMLA to ‘follow the money’ associated with crime.

**2.3.3. Compliance with Recommendation 3**

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Cascade of gaps in predicates</li> <li>• No coverage of property indirectly derived from proceeds of crime</li> <li>• Property held by 3<sup>rd</sup> parties is not subject to confiscation.</li> <li>• Despite some use of the provisions, overlapping regimes may impede effective implementation.</li> </ul>
<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Nauru does not have an established system for statistics.</li> <li>• This is a composite rating</li> </ul>

## **2.4. Freezing of funds used for terrorist financing (SR.III)**

### **2.4.1. Description and Analysis**

174. SRIII requires that jurisdictions implement targeted financial sanctions in keeping with UNSCR 1267 and successor resolutions. In June 2011, the UN Security Council adopted UNSCRs 1988 and 1989 as successor resolutions to UNSCR 1267. These split the previous 1267 sanctions regime and the 1267 consolidated list into two elements. UNSCR 1989 sets out targeted financial sanctions against Al-Qaida and forms the basis for the Al-Qaida Sanctions List which includes Al-Qaida individuals, groups, undertakings and entities from the previous Consolidated List. Under UNSCR 1988 targeted financial sanctions were applied to those individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan. Accordingly, the designated entities related to the Taliban section of the previous consolidated list were moved into the 1988 Sanctions List.

#### ***Legal Framework:***

175. CTTOC contains provisions for the freezing of funds used for TF and targeted financial sanctions against those who finance terrorism.

#### ***Freezing Assets under S/Res/1267 (c. III.1):***

176. At the time of the onsite visit there were no effective laws and procedures to freeze without delay terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267 and successor resolutions.

177. Section 29 of the CTTC requires all financial institutions, DNFBPs and entities, which may be prescribed, to immediately inform the Secretary for Justice when there are reasonable grounds to suspect the existence of any property in its possession or control that is owned or controlled, directly or indirectly, by or for a *specified entity*, including property derived or generated from that property.

178. Subsection 4(1) of the CTTOC defines ‘specified entities’ to be those entities listed from time to time by the UN Security Council as terrorist entities. However, subsection 4(2) requires that the Minister for Justice and Border Control must, by notice published in the Gazette, give notice of the list of terrorist entities referred to in subsection (1), and continue to give notice as and when the UN Security Council adds or removes any terrorist entity from that list. The 1267 Monitoring Team indicates that the Al-Qaida List (UNSCR 1989) and the 1988 Sanctions List (UNSCR 1988) are not lists of terrorist entities. As such, the lists would not seem to meet the definition of ‘those entities listed from time to time by the UN Security Council as terrorist entities’.

179. Powers under the CTTOC do not provide for property owned or controlled by 1267 designated entities to be frozen without delay. Under section 16, the Minister for Justice and Border Control may apply to the court for a direction to take custody and control of “terrorist property” by the “Administrator”. There is no obligation under the CTTOC on the government to apply for a custody order or freeze order, and no obligation to do so without delay. There is no requirement for the court to grant such applications when it is satisfied that there is a match with property owned or controlled by 1267 designated entities.

180. Terrorist property is widely defined. The “Administrator” has the same meaning as that in POCA. Under POCA (section 2), the “Administrator” means SJ or the person appointed under section 102 by the Minister. But there is no definition for “Minister” under POCA and it is unclear which minister it refers to, although the evaluation team was informed that the “Minister” under POCA means the Minister for Justice and Border Control.

181. At the time of the onsite visit and in the period immediately thereafter the Minister for Justice and Border Control had not gazetted the 1267 list of designated entities, so the scheme was not in operation.<sup>17</sup>

***Freezing Assets under S/Res/1373 (c. III.2):***

182. There are no effective laws and procedures to freeze without delay terrorist funds or other assets of persons designated under a national system in accordance with UNSCR 1373.

183. Section 5 of the CTTOC provides a basis for domestic designation of terrorist groups whose property may be subject to freeze. Section 5(1) provides that entities may be proscribed when the Minister has reasonable grounds to believe that:

- (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or
- (b) an entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned in paragraph (a); or
- (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).

184. As identified above for UNSCR 1267, under section 16, the Minister for Justice and Border Control may apply to the court for a direction to take custody and control of “terrorist property”. Powers under the CTTOC do not provide for property owned or controlled by terrorist entities designated by Nauru under UNSCR 1373 to be frozen without delay. There is no obligation under the CTTOC on the government to apply for a custody order or freeze order, and no obligation to do so without delay. There is no requirement for the court to grant such applications when it is satisfied that there is a match with property owned or controlled by 1373 designated entities. At the time of the onsite visit, no entity been declared under section 5 CTTOC.

***Freezing Actions Taken by Other Countries (c. III.3):***

**CTTOC**

185. Section 5 of the CTTOC would provide a basis for the Minister for Justice and Border Control to consider designations taken by other countries and declare a terrorist group if the foreign action provides the Minister with reasonable grounds to believe that: (a) an entity has knowingly

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<sup>17</sup> On 30 May 2012, under Section 4(2) of the CTTOC, the Justice Minister proscribed the UNSCR 1267 Al Qaida Sanctions List as updated 10 May 2012. This would have the effect of bringing Section 16 into operation for the listed Al Qaida entities. The entities on the 1988 Sanctions List were not proscribed. Under the APG Mutual Evaluation procedures, as this took place outside of the period immediately after the onsite visit, it is not considered for the purpose of ratings.

committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or (b) an entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned in paragraph (a); or (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b). The limitation with the powers to freeze without delay as mentioned above would remain.

***Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):***

186. The definition of “terrorist property” under CTTOC and AMLA includes “property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity” (paragraph (c)). This would appear to include funds indirectly owned or controlled.

***Communication to the Financial Sector (c. III.5):***

187. Due to the small size of Nauru, the transmission of information could be fast. The obligation to check for property controlled by *specified entities* is in the CTTOC. Further communication to the financial sector has not been undertaken.

***Guidance to Financial Institutions (c. III.6):***

188. There are no guidelines in relation to freezing terrorist assets without delay provided to any entity undertaking the designated financial activities. There is a provision under the CTTOC for the authorities to issue implementing regulations.

***De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):***

189. The Minister for Justice and Border Control may publish a notice in the Gazette to add or remove terrorist entity from the list under subsection 4(2). Entities declared under section 5 CTTOC may be revoked under section 6.
190. Under paragraph 18(1)(b), the court may on the application of the Minister for Justice and Border Control revoke a direction to take control of property under section 16 CTTOC. Or if not earlier revoked, the direction expires if the entity ceases to be a specified entity (subsection 18(5)).

***Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):***

191. A person who owns or controls the property under a direction given under section 16 CTTOC by the court may make an application for variation under section 18.
192. A freezing order under section 54 AMLA may be varied or revoked on an application by any person under section 61.

***Access to frozen funds for expenses and other purposes (c. III.9):***

193. The CTTOC does not provide a legal framework to implement the requirements to regulate access to frozen funds of appearing on the sanctions lists pursuant to UNSCR 1267 and successor resolutions. The CTTOC is limited to domestic processes whereby a person who owns or controls the property under a direction given under section 16 CTTOC by the court may make an application for variation under section 18. Under section 20, part 3 of POCA with the necessary modifications applies to the property that is the subject of a direction under section 16. Under section 53 POCA

(part 3), an ancillary order in relation to a restraining order may be made in relation to the property under restraint.

194. A freezing order under section 54 of AMLA may be varied on an application by any person under section 61.

***Review of Freezing Decisions (c. III.10):***

195. Under section 19 CTTOC, a person whose property is subject to a direction under section 16 may appeal to the Supreme Court against a decision made by the District Court.

196. An applicant may in accordance with the rules of the court, appeal from an order made under section 54 AMLA (section 79).

***Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4, 3.6 in R.3, c. III.11)***

**CTTOC**

197. The court may on the application of the Minister for Justice and Border Control make a forfeiture order against terrorist property under section 23 of the CTTOC. “Terrorist property” is defined under section 2 and includes property that has been, is being, or is likely to be used to commit a terrorist act or by a terrorist group or property derived from property owned by a specified entity. There is no provision for confiscation of property of corresponding value.

198. Pursuant to section 20, the provisional measures and investigation powers for tracing terrorist property under Part 3 POCA apply to the property that is the subject of a direction under section 16.

199. An application for the direction under section 16 may be made ex-parte (paragraph 16(2)(b)). There is, however, no provision to void actions in relation to terrorist property.

**AMLA**

200. Provisions in the AMLA are those described for Recommendation 3 (see the full analysis in section 2.3 of this report).

**POCA**

201. Sections 59 to 69 of the POCA provide for interim restraining orders for foreign serious offences, i.e. an offence punishable for not less than 12 months in a foreign country. But the court has to be satisfied either that a person has been convicted of a foreign serious offence or that a criminal proceeding for a foreign serious offence has commenced or is reasonably believed to be about to commence (subsection 63(a)). This would not enable Nauru to freeze property involved in a foreign TF offence.

***Protection of Rights of Third Parties (c. III.12):***

202. A person who claims an interest in property subject to a direction under section 16 may apply to the court for relief under sections 21 and 22 CTTOC. A person who claims an interest in property that has been forfeited may appear and present evidence at the forfeiture proceedings against terrorist property (sections 23(4) CTTOC).

203. Provisions in the AMLA are those described for Recommendation 3 above.

***Enforcing the Obligations under SR III (c. III.13):***

204. Section 29 (8) of the CTTOC provides for criminal sanctions in cases where a financial institutions fails to immediately tell the Secretary for Justice about terrorist property which it reasonably suspects is related to terrorist financing. The sanctions are 15 years in jail, but do not include financial sanctions for the financial institution.

***Statistics (applying R.32) & Analysis of Effectiveness***

205. Nauru has no cases of freezing terrorist assets so far. At the time of the onsite visit Nauru had not taken measures to gazette or declare the specified entities under sections 4 and 5 of the CTTOC. Therefore the provisions concerning TF under CTTOC were not fully in force.

***2.4.2. Recommendations and Comments***

206. Although CTTOC provide the legal framework for TF freezing and confiscation, the provisions do not provide for freezing without delay. Those powers that are available were not in operation at the time of the onsite visit, as no entity had been gazetted or declared to implement either UNSCR 1267 or 1373.

- Nauru should review the legal and procedural framework to effectively implement SRIII, including requiring property owned or controlled by a designated terrorist entity to be identified and frozen without delay. This will require amending the CTTOC to provide for powers and mechanisms to freeze property without delay in the case of a match.
- Nauru should issue implementing regulations and provide guidance to the one financial institution and any other bodies, which may have obligations to implement targeted financial sanctions under the CTTOC.
- Nauru should consider amending the CTTOC to avoid the need for the Minister to gazette each change to the UNSCR 1267 consolidated list.

***2.4.3. Compliance with Special Recommendation III***

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.III</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No proper basis for effective implementation of UNSCR 1267 or 1373 to freeze terrorist funds without delay</li> <li>• Due to a lack of prescription, the mechanism for 1267 was not in effect at the time of the onsite visit.</li> <li>• Requirements for the Minister to gazette each update to the UN sanctions lists may add to delays.</li> </ul>

## **2.5. The Financial Intelligence Unit and its Functions (R.26)**

### **2.5.1. Description and Analysis**

207. Nauru's Financial Intelligence Unit (FIU) is established in the Department of Justice and Border Control (DJBC) and has a dual role both as FIU and AML regulator. The FIU fulfils its functions under the *Anti-Money Laundering Act 2008* (AMLA 2008) independently of law enforcement, revenue, and criminal justice agencies, providing support to all agencies.

#### ***Legal framework***

208. The FIU was established within DJBC in 2004 to carry out the functions of the competent authority under the AMLA 2004. The Nauru Cabinet appointed the FIU as the competent authority under the AMLA. The legal powers accorded to FIU were updated in the revised AMLA 2008 and are set out in section 8 of that Act. FIU is the central agency to receive and analyse suspicious transaction reports (STRs) and border currency reports (BCR's) as well as to disseminate financial information from these reports to the appropriate enforcement agencies for investigation into suspected criminal activities.

#### ***Establishment of FIU as National Centre (c.26.1)***

##### ***Receipt of STRs and other data***

209. Under Section 8 of the AMLA 2008, the FIU serves as the national centre mandated to receive STRs from financial institutions as well as information provided by any agency or another country, or by a law enforcement agency, government institution or supervisory authority: and any other information provided voluntarily relating to suspicion of ML and TF offences, or an unlawful activity.

##### ***Analysis***

210. Subsections 8(b-d) empowers the FIU to collect any information that it considers relevant to ML, financing of terrorism or unlawful activities whether or not publicly available, including from databases maintained by the Government. The AMLA gives the FIU authority to request information from any law enforcement agency, government institution or agency supervisory authority and analyse and assess all reports and information.

211. Upon Receipt of the STR, the FIU would conduct the process of analysis as set out in its standard operating procedure (SOP). The FIU would first check its own database to determine if the subject of the STR already exists within the database (previous STRs or by other sources of information). If deemed necessary, request further information related to the STR from the reporting party (eg account information relevant to the analysis). Also, the FIU would request information from any other relevant government institution in furtherance of the analysis. The FIU would incorporate the findings of additional information related to the original STR into a final analytical report before submitting such report to the Office of the Director of Public Prosecutions (ODPP) for further appropriate action.

212. The FIU advised that they have not received any suspicious transaction reports, so have not yet had experience of implementing the SOP regarding the receipt of STRs.

213. The STRs are to be submitted manually by financial institutions in a prescribed form. Because the jurisdiction is small, the process of manual submission of reports to FIU would be both timely and efficient. Upon receipt of an STR, the information would be manually entered into FIU's stand-alone computer and backed up to the government's server.

214. The FIU's data management system does not support the FIU to effectively analyse and disseminate intelligence.

#### ***Guidelines***

215. In 2007 the FIU issued guidelines under the AMLA 2008 which includes guidance on the manner of reporting including specification of reporting forms. All financial institutions met during the on-site confirmed receipt.

216. The guidelines do not create enforceable obligations, but are intended to assist financial institutions and their staff in identifying and reporting suspicious transactions and attempted transactions, and include advice on identifying suspicious activity, how and when reports are required to be made, the form to be used and the statutory protections and obligations upon making a suspicious transaction report.

217. While the guidelines were prepared in 2007, and refer to the earlier Anti-Money Laundering Act 2004 (AMLA 2004), the guidelines were sent to all reporting entities on 10 January 2009 with covering instructions from the FIU Supervisor. In the 2009 instructions, reporting entities were reminded of the STR obligations in the AMLA 2008 and were provided with the 2007 guidelines to assist in reporting STRs as per the obligation in the AMLA 2008. The STR reporting form contained in the guidelines contains an out-dated reference to its statutory basis.

#### ***Access to information***

218. Under subsections 8(b) and 8(c) of the AMLA, the FIU has the relevant powers to request or obtain access to information concerning STRs from any law enforcement agency, government institution and supervisory authority. The FIU can also access information that is publicly available, including information from available commercial databases, or information that is collected or maintained by the Government of Nauru.

219. The FIU has no electronic access to administrative information held by other government agencies. In practice, specific requests are made for this directly to the agency concerned. This can lead to delays in receiving responses when requesting information.

220. At present there are no legal provisions for immigration arrival or departure cards with passengers declarations of cash are to be shared with the FIU, however, given Nauru Customs is also an agency within the DJBC, requesting or access to that information would be timely.

221. The FIU has access to information on customs duties and tariffs for goods imported.

#### ***Additional Information from Reporting Parties (c.26.4)***

222. The FIU is empowered under subsection 8(b & f) of the AMLA to collect information from reporting parties and to take such steps as may be appropriate in relation to any information that has

been reported to the FIU to provide additional information. This power is adequate and allows the FIU to properly undertake its functions.

***Dissemination of Information (c.26.5)***

223. Subsection 8(e) of the AMLA authorises the FIU to send any matter or any information derived from any report or information it receives to the ODPP if, on the basis of its analysis and assessment, the FIU has reasonable grounds to suspect that the matter or information is relevant to the investigation or prosecution of ML, TF or an unlawful activity.
224. Furthermore, Section 10 of the AMLA permits the dissemination of any report or information to a foreign state or foreign FIU in relation to ML, TF or unlawful activity. The definition of ML and unlawful activity would appear to preclude the FIU disseminating information that relates to tax offences. The FIU can place such terms and conditions that may be appropriate to the information or report when disseminating such information and report. Section 29 of the CTTOC also allow for the Secretary for Justice to disseminate information to foreign FIUs relating to property controlled by designated terrorist entities.
225. The mechanism of dissemination to the ODPP rather than the police appears to be a remnant of earlier concerns regarding a lack of capacity and integrity for financial investigations in the NPF and a lack of trust with primary responsibility for ML/TF investigations. In recent years the standard and capability of the NPF appears to have greatly improved. It would therefore be more efficient if the NPF received suspicious transaction reports in the first place, conducted further investigations and then provided appropriate briefs to the ODPP for prosecution. This would ensure that all referred reports are properly investigated, not just those that the ODPP *prima facie* considers may result in a successful prosecution.

***Operational Independence (c.26.6)***

226. Section 7 of the AMLA establishes the FIU as a Unit. However, there are no further provisions relating to control or operational independence of the FIU. Based on the FIU having being established in the DJBC, the operational independence of that unit is subject to the provisions of the host agency.
227. The AMLA provides for the appointment of a supervisor who shall be the head of the FIU. AMLA provides that until the Cabinet appoints the FIU Supervisor, the Secretary of Finance shall be the supervisor. The AMLA does not address issues related to how the FIU Supervisor reports to government and how the FIU Supervisor is to be recruited, appointed and possibly terminated.
228. A concern is that the FIU has no formally approved structure and in practice the FIU Supervisor is performing dual/triple roles, which is not uncommon in Nauru. Host Agency functions in general take priority over the functions and duties of the FIU. A concern is this situation may, in the future, lead to a potential for undue pressure, conflict of interest or interference to arise.
229. The FIU Supervisor has the prerogative to decide on whether or not to disseminate STRs and other data to the ODPP.

230. The FIU is located within the DJBC building. The FIU is staffed exclusively by the FIU Supervisor and at the time of the Mutual Evaluation visit assisted by three staff. The FIU does not have a separate budget. The budget is part of the DJBC approved ultimately by Secretary of Justice.
231. Since the establishment of the FIU, no FIU Supervisor has been removed. The recent change in FIU Supervisor was a decision to strengthen FIU operations.

***Protection of Information (c.26.7)***

232. The FIU Supervisor and her/his staff may not disclose any information, except in accordance with the AMLA, that would directly or indirectly identify an individual who has provided information to the FIU, or a person or entity about whom a report or information was provided under the AMLA.
233. Information held by the FIU is maintained in the governments server accessed only by the Supervisor via log in and password, with files backed up to an external hard drive, and this is also retained within the FIU office. Hard copies of STR reports would be kept in secure storage. The information is otherwise not subject to any additional security measures.
234. Information would only be disseminated according to the conditions under the AMLA and proposed MOUs as part of FIU's 2012 agenda.
235. The FIU is located within the DJBC, which is a part of the Government building that is occupied only by the DJBC. Access to these premises is not restricted but access to the FIU office is restricted to authorized persons. However, the physical security measures in place are minimal. Other staff of the DJBC could conceivably enter the FIU office without much difficulty.

***Publication of Annual Reports (c.26.8)***

236. The FIU is not required under AMLA to publish periodic or annual reports as to its activities including statistics, typologies and trends. However, there has been a recent change in the position of the FIU Supervisor and it is envisaged that under the new leadership, periodic reports will be published by the FIU.

***Membership of Egmont Group (c.26.9)***

237. Nauru has considered seeking membership of The Egmont Group of FIUs. The FIU is actively attempting to secure the sponsorship of existing Egmont members to initiate the application process.

***Egmont Principles of Exchange of Information Among FIU (c.26.10)***

238. The AMLA provides an open basis for sharing information with foreign FIUs. Not being an Egmont Member the FIU has indicated that it does not yet pay close attention to the Egmont Group Principles for Information Exchange. However, during the onsite visit, authorities acknowledged the important guidance concerning the role and functions of FIUs, mechanisms for exchanging information expressed by Egmont and were eager to share information in accordance with these guidelines.
239. Nauru is actively considering signing a Memorandum of Understanding (MoU) with the Fiji Islands FIU as well as a regional MoU with Pacific Island Nations.

***Adequacy of Resources to FIU (c.30.1)***

240. The FIU does not have a separate budget. Any expenses incurred by the FIU are taken from the DJBC budget as host agency.
241. The FIU is staffed exclusively by the FIU Supervisor and at the time of the Mutual Evaluation visit assisted by three staff. It is not clear that this assistance is available beyond the evaluation. The Supervisor is a lawyer by profession and is the Principal Legal Officer with the DJBC as well as the Registrar of Corporations and other roles. While her time is stretched thin by so many roles, there are a number of constructive overlaps, including her roles as Supervisor and Registrar of Corporations.
242. Given the very small size of the industry and resourcing and capacity situation in Nauru, the FIU does not dedicate full time employees to fulfil its statutory role of both FIU and AML supervisor.

***Integrity of FIU Authorities (c.30.2)***

243. The supervisor is appointed by Cabinet and the officers are appointed by the Supervisor in consultation with the Chief Secretary. Given that all officers are members of the public service, they are therefore also subject to the provisions of the *Public Service Act 1998* which has disciplinary powers and codes of conduct within the law itself.

***Training for FIU Staff (c.30.3)***

244. Current and former FIU staff have received training on ML and FT provided by Australian Transaction Reports and Analysis Centre (AUSTRAC- the Australian FIU). FIU staff have attended international training programs, including APG and International Monetary Fund (IMF) related training workshops. However, during the onsite visit, officials recognised the need for further training and technical assistance with regards to analysis and dissemination and AML/CFT supervisory functions.

***Statistics (R.32) and Effectiveness***

245. The FIU has not yet received any STRs or undertaken analysis of any material received. The FIU does have an SOP in place to perform analysis and to disseminate to law enforcement should an STR be received.
246. Discussions with financial institutions during the onsite indicated a small number of possible instances where STRs may have been submitted but were not because of a lack of awareness of what constitutes a suspicious transaction.
247. Some of the resource constraints on the FIU were being addressed with the appointment of a new FIU Supervisor in October 2011, although procedures and systems are not yet in place to make the FIU effective. There is significant potential for this unit to make a valuable contribution to law enforcement and also the financial sector integrity in Nauru, but at present the lack of resources (particularly staff) prevent this potential from being realized.
248. The FIU Supervisor is dedicated and is providing leadership within the DJBC, to strengthen the FIU.

249. Given the size of the jurisdiction and its negligible financial sector, there is no need for full-time FIU staff, but rather a structure within the DJBC that allows DJBC staff who have some skills and experience of FIU functions to be responsible for FIU functions on a part-time basis.
250. In May 2007, the FIU developed SOPs that covers a wide range of the FIU's operations. There is a need to update the SOPs to reflect the AMLA 2008 and for FIU staff to continue to make use of these SOPs.
251. The lack of STR reporting is not an absence of obligation, but rather a lack of understanding of obligations under AMLA, low rates of profit driven crime, small reporting sector (one financial institution) and limited interaction by FIU with the industry.
252. During the onsite visit, the private sector indicated that it had interacted only once with FIU when the guidelines were issued and that there were mixed views regarding a favourable relationship with FIU.

### ***2.5.2. Recommendations and Comments***

- Provide for direct dissemination of STRs to the NPF under the AMLA.
  - Amend the STR reporting form and STR guideline to reflect the AMLA 2008.
253. Given the FIU Supervisor's multiple functions and responsibilities, the current structure of the FIU impedes the ability of the FIU to fulfil its statutory function. Nauru should:
- Develop a structure for the FIU within the DJBC to allow the FIU to identify and deputise officers to perform some FIU functions at times of peak demand. This would operationalize the structure employed during the Mutual Evaluation.
  - Give formal authority/discretion to be exercised by the FIU Supervisor to delegate AML/CFT related duties to designated officers on a part-time basis when needed to implement FIU functions.
  - Develop a suitable data management (excel spread-sheet) and analysis system to support analysis.
  - Give the FIU authority to determine its staff recruitment to better ensure that it is protected from undue influence and interference the.
  - Allocate a dedicated budget to the FIU which would be under the control of the FIU Supervisor to cover operational expenses.
  - Reach out to the reporting entity to ensure that RIs understand the manner and forms of reporting and other responsibilities under the AMLA.
  - Engage with partner agencies, in particular the NFP and the Audit Office to enhance information sharing.

- Ensure the FIU gives feedback to financial institutions on STR reporting, emerging trends or typologies. This could be included in an FIU annual report.
- The FIU should maintain comprehensive statistics on its activities.

254. Nauru should consider:

- Enhancing information sharing agreements with Pacific Islands Forum members' FIUs and other key regional FIUs.
- Applying for membership of the Egmont Group.

### 2.5.3. Compliance with Recommendation 26

	<b>Rating</b>	<b>Summary of factors relevant to s.2.5 underlying overall rating</b>
<b>R.26</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Dissemination is limited to the ODPP, rather than the police</li> <li>• There is a lack of a suitable data management system for the FIU.</li> <li>• Guidance to financial institutions on the manner and form of reporting is out-dated.</li> <li>• The FIU does not issue an annual report, including typologies</li> <li>• A lack of autonomy to determine staffing may undermine effectiveness.</li> <li>• Effectiveness has not yet been established</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The absence of a structure to gain more resources for the FIU at peak times undermines effectiveness.</li> </ul>

## **2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)**

### **2.6.1. Description and Analysis**

#### **RECOMMENDATION 27**

##### ***Designation of Authorities ML/TF Investigation (c.27.1)***

255. The NPF is the sole law enforcement agency designated to investigate ML, proceeds of crime and TF in Nauru. Both police and customs have a role in investigating predicate offences. The ODPP has the responsibility to prosecute ML and TF and lead proceeds of crime actions. The FIU has a lesser role to support the NPF in its investigation role through the provision of information.
256. The NPF has limited experience with investigation in pursuit of proceeds of crime. Understanding and knowledge of the provisions of the POCA and AMLA is low. In 2009 five ML charges were laid, but there were ultimately amended by the ODPP to receiving stolen property. No TF investigations have been undertaken in Nauru.

##### ***Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):***

257. There is no statutory authority to allow police to postpone or waive the arrest of a person, or to delay the seizure of the money for the purpose of identifying persons involved in the commission of a serious offence. However, there is also no law to prevent police from doing this. Police in Nauru have the discretion whether and if so, when, to arrest any person.
258. As a matter of procedural practice the NFPP, during the course of any investigation, can suspend or waive the arrest of a suspected person or the seizure of the money for the purpose of identifying persons involved in such criminal activities or for evidence gathering.
259. A specific provision is contained in section 30 of the CTTOC to allow the controlled delivery of any property to identify persons or gather evidence against an offence contained in the CTTOC. Section 17 of the *Illicit Drugs Control Act 2004* allows for controlled delivery in regards to illicit drugs.

##### ***Additional Element – Ability to use special investigative techniques (c. 27.3) :***

260. The NPF has no statutory authority to utilize special investigative techniques. NPF has the ability to undertake static surveillance, but do not have the capability to undertake mobile surveillance in part due to resources and limitations associated with the practicalities of undertaking such techniques in a small jurisdiction. There is nothing in law that prohibits use of special investigative techniques.

##### ***Additional Element – Use of special investigative techniques for ML/TF techniques (c. 27.4):***

261. Section 30 of the CTTOC provides that an authorised officer (Director of Police, or an officer authorised by the Director of Police) may allow property, that the authorised officer reasonably suspects has been, is being or may be used to commit an offence against this Act, to enter, leave or move through Nauru for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

*Additional Element – Specialised investigation groups & conducting multi-national investigations*

262. Police advised that the Criminal Investigation Unit (CIU) is the permanent unit to specialize in proceeds of crime investigations and that currently they lack the proper capacity and resources to conduct these types of investigations.
263. The NPF have not had the opportunity to conduct co-operative investigations with competent authorities in other countries. The authorities advised during the onsite visit that they would be willing to utilize special investigative techniques if circumstances, resources and capacity allowed.

*Additional Element – Elements—Review of ML & TF trends by law enforcement authorities (c. 27.6):*

264. The NPF or FIU have not undertaken a study on ML/TF threats and trends as they apply to Nauru.

**RECOMMENDATION 28**

*Ability to Compel Production of and Searches for documents and information (c. 28.1):*

265. The NPF have general powers of search and seizure for the investigation of serious offences, including ML, TF and predicate offences, albeit, limited in terms of coverage.
266. The primary gathering tool for CIU is the search warrant provisions pursuant to section 75 of the *Criminal Procedures Act 1972*. The search warrant provision enables police to enter any named building, ship, aircraft, and vehicle to search for and seize evidence of an offence. However, the general search warrant power is out dated and does not provide the range of measures to effectively investigate ML and terrorist financing, and underlying predicate offences.
267. The AMLA 2008 provides comprehensive powers in relation to powers for search and seizure, production orders and other information gathering orders at Part 6. These provisions include monitoring.
268. The POCA provides the NPF with powers to compel production and to search and seize documents and other information. The NPF has authority to apply to the court for a production order to seize and obtain records as they relate to property tracking documents pursuant to section 79 of the POCA. If it would not be appropriate to issue a production order, a police officer can apply for a search warrant pursuant to section 85 of the POCA to enter premises to recover any property tracking documents. In issuing a search warrant to recover property tracking documents, a judge must be satisfied that the investigation in relation to which the search warrant is being sought might seriously be prejudiced if the police officer does not gain immediate access to the document without warning any person. This additional element may impede effectiveness.
269. Additional powers relating to the monitoring of accounts (Monitoring Orders) and the search and seizure of “tainted property” (used to commit a serious offence or the proceeds of a serious offence) are also contained within the POCA.
270. Under Part 5 of POCA, the Secretary for Justice may direct the disclosure of any information held by any government department (despite any other law) if that information has relevance to establishing whether an offence has been or is being committed or for the making or proposed or possible making of forfeiture or pecuniary penalty orders. Such a provision permits the use of taxation information in proceeds of crime matters.

271. Search and seizure powers available under customs laws are available for searches for documents and information that may relate to ML or TF associated with customs offences.

272. In relation to all the provisions in the Criminal Procedures Act, AMLA and POCA, the available powers do not extend to compulsive measures for information related to tax offences.

***Power to take witnesses statements (c. 28.2):***

273. Members of the police are entitled to conduct investigations and take statements from witnesses and suspects for use in investigations and prosecutions of ML/ TF and other underlying predicate offences, and in related actions.

274. There are no express provisions which prohibit customs officers to conduct take witness statements in relation to ML/TF activities to detect border currency movements.

275. In relation to possible ML or TF investigations by Nauru Customs, the authorities advised there is a preference to refer the matter to police. Express authority to question persons is provided in limited form pursuant to section 172 of the Customs Act, however, this relates to dutiable goods or prohibited goods.

**RECOMMENDATION 30 - Resources**

***Adequacy of Resources to LEAs & Other Investigative or Prosecutorial Agencies (c. 30.1):***

*Nauru Police Force (NPF)*

276. The NPF comprises 123 police officers, 72 sworn officers, seven non-sworn, 24 reserves and at the time of the onsite visit 20 recruits. The CIU is the NPF's specialised group with responsibility to investigate all serious offenses, drugs and financial crimes that would include ML/FT and proceeds of crime investigations. The CIU provides the results of their investigation to the ODPP for prosecution.

277. The CIU has a total of 10 Staff. Five have attained the designation of detective pursuant to training by the Australian Federal Police (AFP) and seven members have attended training courses overseas including courses titled: Management of Serious Crime, Interviewing, Criminal Investigations Training and Forensics.

278. Most senior staff have experience with the investigation of serious crimes and a few have been trained in investigation of financial crimes. A training program for investigators has been developed and implemented to improve investigative skills within CIU. The NPF is working to build a skill foundation and to put systems in place that will give CIU sufficient capability to handle financial investigations with some external assistance from the AFP and from the FIU and ODPP.

279. The NPF has recently been subject to various reforms. Currently the NPF is well managed and operating well within the limitations of resource constraints. AFP Officers have been contracted through an Aid Funded Mentoring Programme to provide advice, mentoring and training to NPF officers for the next 4 years.

280. While the resources of the NPF are limited, the NPF Commissioner is of the belief that there is now sufficient capacity within the police to address basic forensic investigation and investigate all

investigations. It should also be noted that there are additional resources in the form of FIU and Audit Office, both of whom have staff who could provide technical support to the NPF if required, for example in financial analysis.

281. The NPF is pursuing a range of reforms to enhance the organisation and improve the delivery of police services. The priorities have been to implement policy, systems, legislation and structures to improve the performance of the organisation. This has included a new Police Act, an IT system to incorporate a data base and human resource and case management systems and the delivery of training directed at the development of policing skills at all levels. The benefits of these reforms are now becoming apparent in a range of areas and favourable comment about the improvement of general policing performance was received from several agencies during the on-site visit.

282. In September 2010 the NPF commenced linkages with the Pacific Transnational Crime Coordination Centre (PTCCC). This has provided for intelligence sharing on transnational crime. There have been initial discussions with the PTCCC to set up a Mini-Transnational Crime Unit (TCU) in 2012 in the NPF as part of the wider regional TCU network and Interpol should be connected in early 2012. The NPF Commissioner is also a member of the Pacific Island Chiefs of Police Conference which provides for additional linkages in combating transnational crime. NPF has identified the officer in charge of CID as the contact officer for the PTCCC.

*Office of the Director of Public Prosecution (ODPP)*

283. The ODPP is responsible for prosecution in criminal matters between the State and the accused. . The ODPP comprises of the Director of Public Prosecutions and two police officers who conduct police prosecutions. The ODPP was inadequately staffed at the time of the onsite visit. The Head of the FIU fills in for the DPP when he is off-island.

284. Regular meetings between ODPP and police have recently been initiated which have resulted in an improved co-ordination between these two agencies. The ODPP also confirmed as a result and in conjunction with the reforms implemented by the Commissioner of Police, the quality of files received from NPF has improved. ODPP have received no training on AML/CFT.

285. The ODPP is independent but operates under the auspices of the Ministry of Justice and Border Control.

*Integrity of Competent Authorities (c. 30.2):*

286. All Police are subject to the professional standards and obligations of the *Nauru Police Force Act 1972*. In addition the NPF has an Internal Investigations Unit to investigate alleged incidents of police misconduct.

287. ODPP's legal staff are required to be registered to practice under the *Legal Practitioners Act 1973* and hold the appropriate knowledge, skills and abilities to perform their duties to the highest standard.

Statistics (applying R.32)

Table 6: Property obtained through crime, 2008-2011

Registered at Court	Offence	Court Decision	Amount of property
03/2011	Stealing	Ongoing	Laptop
05/2011	Robbery	Ongoing	AUD38
06/2011	Robbery	Ongoing	Laptop
07/2011	Stealing	Ongoing	LG mobile flip phone
04/2011	Breaking & entering. Stealing / Receiving	Stealing charge convicted, receiving case ongoing	Dell Laptop D520
01/2010	Uttering false documents	2 years imprisonment	AUD78644
04/2010	Uttering false documents (x50). False pretence (x50). Forgery	18 months and 2yrs 6mths imprisonment served concurrent. AUD 122,269.59 POCA	Same case with an added AUD 122,269.59 as discovered later
02/10	House breaking x 3	Cases joined, 2 years probation	TV, stereo, ring, perfume, mobile phone, A/C unit and cash.
05/2010	House breaking, burglary. Stealing.	Ongoing	Water pump, mobile phone
05/2010	Stealing by person in the Public Service	Community service 100hrs	AUD1692.96
05/2010	Stealing	Community service 100hrs	3 x 44 gallons of diesel fuel
05/2010	Housebreaking	Good behaviour bond for 1 year	1 x carton of noodles, 2 x carton ice-cream, 1 x Cooking toaster
05/2010	Stealing	Community service 100hrs	Computer
07/2010	Stealing	Community service 100hrs	4 tyres worth AUD 4781
08/2010	Stealing	Ongoing	Mobile phone, 1 pkt of cigarettes, 2 cans of corn beef
02/2009	Stealing as servant	60hrs community services 29/4/09	AUD692
04/2009	Money Laundering	Nolle prosque	Charges amended to receiving stolen property
04/2009	Money Laundering	Nolle prosequ	Charges amended to receiving stolen property
04/2009	Money Laundering	Nolle prosequ	Charges amended to receiving stolen property
04/2009	Money Laundering	Nolle prosequ	Charges amended to receiving stolen property
04/2009	Money Laundering	Nolle prosequ	Charges amended to receiving stolen property
04/2009	Robbery	5 months imprisonment	AUD11
04/2009	Robbery, entering a dwelling house, C/Assault	3 years 10 months imprisonment	AUD17
05/2009	Robbery	27 days imprisoned	4 x packet of twisties
	Robbery	2 1/2 years imprisonment	Twisties worth and AUD7 worth of Petrol
05/2009	Robbery	15 months imprisoned, 6months imprisoned and 4 months imprisoned	AUD8, AUD7.50, AUD0.50
11/2009	Disobedience to Statute Law Accessory after the fact	Case still pending	AUD102,000

09/2009	Stealing		Not Available
09/2009	Breaking into building, Stealing		Not Available
	Robbery, entering a dwelling	6 months good behaviour	Digital camera & radio transmitter
	Stealing	Fined AUD350, 12 months good behaviour	Digital camera, MP3 & MP4
	False Pretence	Suspended sentence	Stole from Government AUD 1715.76
	Robbery		AUD1600
05/2008	Forgery, 4 x Making documents w/o authority, Obliterating crossing on cheques, Obtaining Goods by false pretence, stealing	fined AUD300.00 12/05/2006 Paid AUD50.00 remaining balance AUD250.00 -	Approximately AUD2000
05/2008	1) Stealing 2) Attempting Commit Offence	1 week community services 29/07/2008	Freezer
06/2008	1) Stealing 2) Damaging property	1) Fined AUD100.00. good behaviour bond for 1 ear 18/6/2008	Four heavy duty batteries from the metal box at the North Tower Port in Anabar
07/2008	Stealing	Fine AUD100.00 for 2months i/d 1yr imprisoned	Jet A Fuel - 65 litres
07/2008	1)Robbery 2)Serious assault 3)Common assault 4)AOBH	4months and 3months, 1week imprisoned is to be served	AUD60
09/2008	Robbery C/s 409/411	3 yrs imprisonment from 28/03/2009	AUD1200
11/2008	1)Stealing as a servant 2)Forgery	8months imprisonment	Cash AUD21,555.80, fuel worth AUD1750, AUD2,225.80, AUD11,580
12/2008 06/2009	1) Stealing 2) Being upon dwelling w/o unlawful excuse	Cnt1 and cnt2 imprisonment for 6months 12months concurrent	File not available
12/2008	Money Laundering	Charge amended to stealing	

288. Statistics were not available in relation to the use of powers in the above cases.

### ***Implementation and Effectiveness***

289. Given the relatively low levels of crime in Nauru, opportunities for ML investigations have been limited, however, there have been several opportunities that could have been pursued. Statistics of the numbers of property crime and fraud cases show a number of instances of crimes generating proceeds of crime.

290. While a number of cases were initially charged with money laundering, all charges were amended to receiving stolen property. This may indicate that previous ML cases were not properly investigated.

291. A number of high value fraud cases were not subject to ML charges, although some proceeds of crime actions were taken.

292. In recent years, the implementation of a raft of reforms has been the priority of the NPF. In addition there has been no proceeds of crime recovery per AMLA 2008 and POCA 2004, which

reflects a lack of understanding of how to apply this legislation. As a result this lack of understanding extends from NPF to ODPP. This undermines the effectiveness of investigation of ML.

### 2.6.2. Recommendations and Comments

293. There is a general lack of knowledge and understanding of the offence of ML and also the identification of opportunities for the use of proceeds of crime actions.

- The NPF should continue to improve capacity and capability with regards to specialist investigative skill in order to ‘follow the money’ behind profit driven crime.
- Law enforcement agencies and the ODPP should increase their awareness of the powers provided under the AMLA 2008 and the POCA for search / seizure / production and other orders to support investigation of crime and to ‘follow the money’.
- A training awareness programme should be implemented for both NPF and ODPP to address the current lack of awareness of the POCA and AMLA 2008.

### 2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> <li>• Lack of knowledge of the application of the AMLA and POCA has a negative impact on effectiveness</li> </ul>
R.28	LC	<ul style="list-style-type: none"> <li>• Relevant powers are available in various laws including POCA but the effectiveness of the powers has not been demonstrated.</li> </ul>
R.30	PC	<ul style="list-style-type: none"> <li>• Resources, capacity and expertise to conduct and prosecute ML/TF investigations are limited.</li> </ul>

## 2.7. Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1. Description and Analysis

#### *Legal Framework*

294. The legal framework relating to the declaration or disclosure for cross border movement of currency and bearer negotiable instruments in Nauru is based on overlapping legal provisions. These are set out in the POCA 2004, the Customs Act and *Customs Proclamation No 2 1999*. In addition section 31 of the CTTOC provides for the relevant minister with powers to regulate on relevant matters.

295. A reasonably comprehensive legal framework for a declaration system to implement SR.IX is set out at Part 6 (sections 96-98) of the POCA. This provides for the enforcement of the declaration system and relevant provisions which allow for the detection of undeclared cross border movements of funds, search of passengers and cargo and restraint of currency.

296. In circumstances where a border crossing has occurred and a passenger has failed to declare the carriage of funds on a Border Currency Report (BCR), subsection 96(1) of the POCA provides for a sanction. Failing to declare that a person who leaves or arrives in Nauru with more than AUD10,000 in cash or negotiable bearer instruments on his or her person or in his or her luggage commits an offence punishable by:
- For an individual: a fine of up to AUD20,000 or a term of imprisonment not exceeding 2 years; or both;
  - In the case of a body corporate, to a fine of up to AUD50,000.
297. Subsection 96(2) defines Negotiable Bearer Instruments (BNI) to be “a document representing the ownership of debts or obligations, including bills of exchange, promissory notes, or certificates of deposit, whether payable to the bearer or not”. Currency is defined in the POCA as legal tender of any country.
298. Subsection 96(3) of the POCA permits a customs officer to examine the luggage or any article carried by any passenger entering or leaving Nauru. If the officer has reasonable grounds to suspect that the passenger is in possession of an undeclared amount exceeding AUD10,000, they may physically search the passenger.
299. Subsection 96(5) of the POCA authorises any customs officer to stop, board and search any ship, aircraft or conveyance for the purpose of exercising the power conferred by subsection 96(3).
300. The Customs Proclamation No.2, makes it an offence to take over 2500 Australian dollars, 2,500 out of Nauru unless it is authorised by the Bank of Nauru. As the Bank of Nauru is no longer operating, there is some confusion as to whether this section is still operative. The penalty is prescribed under section 204 *Criminal Code*, imprisonment for one year; or under sections 100 and 189 of the *Customs Ordinance 1922 – 1967*, to a monetary penalty of AUD200 dollars and forfeiture of currency. The Customs Proclamation No.2 does not cover incoming currency and does not cover bearer negotiable instruments.

***Mechanisms to Monitor Cross-border physical transportation of currency (c.IX.1)***

301. The Nauru Customs departure card includes two overlapping declaration requirements, one of which relates to an elapsed provision in out-dated legislation. The first declaration requirement is in relation to AUD2,500 under the Customs laws. The second declaration is listed as an FIU requirement and seeks a declaration of cash or BNIs of more than AUD10,000. In cases of positive declaration to the FIU requirement, a Border Currency Report (BCR) Form will be provided to travellers to record further details. A public notice was posted at the airport in 2007, but it is not clear that copies of the BCR are provided to passengers.
302. References in the Customs Departure Card to the AMLA 2008 are out-dated, as the AMLA 2008 does not include provisions for cross border declarations. The departure card obligation can be used to give effect to the above listed obligation in the POCA.
303. Declarations required in the POCA relate to persons and do not appear to extend to unaccompanied luggage, postal items or cargo. The search provisions under section 96 of the POCA relate to persons and accompanying luggage.

304. The Departure Card declaration requirement relates to Customs Proclamation No 2. It is prohibited to and the export of currency over AUD2,500 without an export certificate. While the team was onsite, Nauru Customs had a case before the court – charged under the Customs Proclamation No.2.
305. There are no provisions in the POCA for BCR to be shared with the FIU. In practice the BCR forms are being filed in Nauru Customs. The FIU has access to this information upon request.
306. In practice a completed BCR form seeks full passenger’s details, identification documents, details of the owner funds, if they are being carried by the passenger on behalf of another, along with related travel information and the amount of cash or BNI.
307. In addition, the CTTOC, section 31, obliges the operator of any craft arriving or departing Nauru or if registered in the Nauru, departing from any place outside of Nauru, to provide to the relevant border authority any information related to any person or goods on board, or expected to board the craft. Such information obtained can only be used or disclosed for the purpose of protecting border security, national security or public safety. Additional provisions exist, which would enable such information to be shared with competent foreign jurisdictions.

***Request information on origin and use of currency (c.IX.2)***

308. On the prescribed BCR form, a customs officer is required to ask or obtain from the carrier details of the country of origin of the currency or BNI and the intended use of the currency/BNI. There is however no explicit legal authority to request such information. However, there is no authority that expressly inhibits customs officers from seeking such information from passengers and take statements as required.

***Restraint of currency (c.IX.3)***

309. In the case of a false declaration or the discovery of a non-declared movement of currency or BNI, subsection 97(1) of the POCA authorises the detention of the currency or BNI for up to 48 hours by an authorised officer. This detention requires there to be reasonable grounds to believe that the funds are derived from a serious offence or there are reasonable grounds to believe that the funds are intended to be used in the commission of a serious offence. The court may grant continued detention for an additional period of three months if satisfied that there are reasonable grounds for suspicion as to the grounds outlined in section 97 of the POCA and that continued detention is justified while:
- (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the institutions (in Nauru or elsewhere) of criminal proceeding against a person for an offence with which the currency or BNI is connected.
310. The court can grant a final renewal as long as the total period of detention does not exceed two years from the date of the first order made.
311. Under the POCA, only an ‘authorised officer’ may seize and detain currency and BNI. The definition of an authorised officer does not include general customs staff. The legislation requires designation, in writing, by the minister. However, there has to date been no appointment of authorised officers under the POCA.

312. There is no express provision to seize undeclared currency or BNIBNI in the absence of a belief that the funds are derived from a serious offence or there are reasonable grounds to believe that the funds are intended to be used in the commission of a serious offence. Clarity in statute to permit immediate seizure whilst an investigation into a breach of subsection 96(1) of the POCA is undertaken or whilst a prosecution is pending would be advisable.

***Retention of information of currency and identification data by authorities when appropriate (c.IX.4)***

313. The Nauru Customs retains all originals of BCR's and forwards the BCR's to FIU when requested. There have been no false declarations reported by Nauru Customs but had such incidents occurred, Nauru Customs would submit the details to FIU and the appropriate law enforcement agencies. There is no provision which obliges border authorities to submit a report to the FIU where they suspect a ML/TF border movement of cash for an amount less than AUD10,000.

314. The BCR's are retained by Nauru Customs for an unspecified period of time. The Nauru Customs retains BCR's in both hard copy and electronic form on a stand-alone computer backed to the government server. BCR's are available for further investigation and are able to be accessed by competent authorities for AML/CFT purposes. They are not automatically provided to the FIU.

***Access of information to FIU (c.IX.5)***

315. The FIU advised that they receive information from Nauru Customs concerning cross border transportation of cash or BNI when requested.

***Domestic cooperation between Customs, Immigration and Related Authorities (c.IX.6)***

316. Nauru Customs and Immigration and Quarantine report to the Director of Border Control as a result, there is cooperation between Nauru Customs, Immigration and Quarantine and related authorities in terms of border management issues, and this extends to issues related to the implementation of SR IX.

317. In the operational arena, all three agencies and Airport Security work as a co-ordinated unit when processing passengers at the airport and ships at the one port.

***International cooperation between competent authorities relating to cross-border physical transportation of currency (c.IX.7)***

318. Nauru is not a member of the World Customs Organisation, but is a member of Oceania Customs Organisation (OCO). The OCO provides a platform within which regional customs administrations are able to source, share, exchange, or provide intelligence information which can be accessed by international counterparts.

319. With regard to the exchange of information relating to terrorist groups and terrorist acts, the Secretary of Justice may share with any appropriate authority in a foreign county any information that relates to travel movements, traffic in explosives or other lethal devices, the use of travel documents, and information relating to the use of any communication technology used by any terrorist group or any person suspected of involvement with any terrorist act.

***Sanctions for making false declarations/disclosures (applying c.17.1-17.4 in R.17,c.IX.8)***

320. Section 96 of the POCA outlines sanctions of a fine of up to AUD20,000 or a term of imprisonment not exceeding two years or both in the case of an individual; or, in the case of a body corporate, a fine of up to AUD50,000.
321. Section 221 of the Customs Act establishes that it is an offence for a person to make a false declaration, fail to answer questions or produce documents. The sanction is limited to a AUD2000 fine.
322. The Customs Proclamation No.2, makes it an offence to take more than AUD2,500.00) out of Nauru unless it is authorised by the Bank of Nauru. The penalty is prescribed under section 204 Criminal Code of Queensland, imprisonment for one year; or under sections 100 and 189 of the Customs Ordinance, to a monetary penalty of AUD200 dollars and forfeiture of currency.

***Sanctions for cross-border physical transportation of currency for purposes of ML or TF***

323. There is no specific sanction relating to cross border transportation of currency for ML or TF.

***Confiscation of currency related to ML/TF (applying c.3.1-3.6 in R.3, c.IX.10)***

324. There are provisions in the POCA to search for, restrain and confiscate currency if it relates to ML or a qualifying serious offence. Failure to declare amounts above AUD2500 under the Customs Proclamation triggers administrative forfeiture under the Customs Act.

***Confiscation of currency pursuant to UNSCRs (applying c.III.1-III.10 in SR III, c.IX.11)***

325. As discussed earlier in the report, the implementation of SR III is partially provided for under the CTTOC, but has not been implemented in practice.

***Notification of Foreign Agency of unusual movement of precious metal and stones (c.IX.12)***

326. If, during the course of routine customs inspections, a discovery of an unusual cross border movement of gold, precious metals or stones were made, there is no legislative obligation to notify the appropriate customs service of the country from which the items had originated or to which they were destined. However, should such a discovery be made, the evaluation team was informed that it is most likely that in practice this information would be passed on as appropriate.

***Safeguards for proper use of information (c.IX.13)***

327. BCR data or information is held in the Nauru Customs stand-alone computers and is used or disseminated to FIU under AMLA provisions when requested. The originals are retained by Nauru Customs are also computerised.

***Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):***

328. No specific AML training has been conducted for customs' staff. However, officers were trained on border currency reporting by the Secretary of Justice.

329. Personal data are collected through passenger cards and BCRs for those who carry more than AUD10,000 and currency export certificates. The data on those documents are given to Nauru Customs and FIU and shared among those organizations that report to the Director of Border Control.
330. There appeared to be no targeting plan, but the team was informed that the case before the courts was undertaken in this manner as a result of intelligence provided.

***Additional Element – Implementation of SR IX Best Practices (c.IX.14)***

331. The FATF's *Best Practices Paper on Detecting and Preventing the Cross Border Transportation of Cash by Terrorists and other Criminals* has not been implemented however it is likely that the relevant procedures will be incorporated into a training regime.

***Additional Element – Computerisation of database and accessible to competent authorities (c.IX.15)***

332. BCR data or information is held in Nauru Customs and the FIU's stand-alone computer that is backed up on Governments server. The relatively small number of BCRs means that these records can be manually retrieved and data provided to competent authorities as required.

***Adequacy of Resources - Recommendation 30.1***

333. Nauru Customs is a department within the DJBC and is funded through the normal government budgetary process. Nauru Customs appears to be well structured and are generally performing its role given the pressing issue of adequate resources and capacity to fulfil its role. The core functions of the customs service include border security, community protection and trade facilitation. Revenue collection is undertaken by the Department of Finance. Nauru Customs has six full time staff who are rostered to work the two-weekly flights and the monthly ships that come into port.
334. Increased resources would help improve effectiveness, but the issues regarding cross border currency reporting are to do with, overlapping legislation, low passenger numbers, limited to 2 flights a week, rather than a legal framework to allow enforcement. As it is, Nauru Customs is generally well placed to manage implementation of this. Training in ML, and FT and POCA 2004 is required to raise general awareness of Nauru Customs staff.

***Integrity of DJBC - Recommendation 30.2***

335. Staff are subject to standards of professional conduct per provision under the Public Service Act, including confidentiality.

***Training of Customs Staff - Recommendation 30.3***

336. Nauru Customs staff has received little training on ML, TF and currency reporting elements of the POCA.

***Statistics - Recommendation 32***

337. Nauru provided statistics of outgoing and incoming cross border cash declarations made under the Customs Act.

**Table 7: Cross border Declarations under POCA**

Cross border actions	2010 <sup>18</sup>	2011	2012 <sup>19</sup>	Total
Reports / Declarations made	8	47	15	70
Detection of suspicious cash / BNI at the border	0	0	0	0

*Analysis of effectiveness*

338. The legal framework for cross border currency reporting is confusing with overlapping effect of the POCA and Customs Proclamation No.2. This undermines the effectiveness of implementation.

339. The customs declaration form refers to out-dated legislation.

340. While the Customs Act is being implemented, the more comprehensive obligations in the POCA have not been fully implemented. Neither legislation provides for automatic sharing of cash export declaration with the FIU, although the FIU can access them on request. Nauru Customs has made a number of detections of undeclared cash.

**2.7.2. Recommendations and Comments**

341. Nauru should implement a consolidated system for the declaration of cross border transportation of currency and BNI, including declaration documents which accurately reflect the legislation and the authorities under which declarations are sought.

342. Legislation or regulation should be amended to:

- extend the scope of coverage of the declaration regime to passenger, mail and cargo;
- ensure that border currency reports are promptly shared with the FIU;
- provide authority for customs staff to question and enquire into the source and destination of currency as it crosses the border;
- clarify that search powers under the customs act should be available in respect of unaccompanied cargo or mail.

343. Training should be implemented to raise the awareness of border control staff with respect to ML, TF and currency reporting legislation.

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<sup>18</sup> From July 2010

<sup>19</sup> Until end of May 2012

**2.7.3. Compliance with Special Recommendation IX**

	<b>Rating</b>	<b>Summary of factors relevant to s.2.7 underlying overall rating</b>
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The declaration system shows some gaps.</li> <li>• Obligations under the POCA do not apply to postal and cargo streams.</li> <li>• Authorities do not have clear authority to request and obtain information on the origin of detected currency / BNIs.</li> <li>• Cross border declarations are not proactively shared with the FIU.</li> <li>• Sanctions are not available for cash couriers that are related to TF offences.</li> <li>• Targeted financial sanctions are not implemented in relation to cross border declaration systems.</li> <li>• Despite some use of the provisions, overlapping legal framework for cross border reporting is confusing and comprehensive controls are not being implemented.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is a gap with training and awareness of border control staff on AML/CFT issues.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics of the implementation of the overlapping cross-border reporting regimes had not been made available to the FIU at the time of the onsite visit.</li> </ul>

### 3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

#### *Preamble: Regulatory approaches in Nauru*

344. Nauru does not have a well-established tradition to regulating financial institutions, which reflects the almost complete absence of a financial sector over the previous eight years. Nauru has an established approach to corporations’ regulation (the Corporations Registrar) and of regulation of business names and business licenses.

345. Nauru has never had a prudential regulation authority for financial institutions, despite having previously offered banking and insurance services. The Finance Ministry had a role at market entry for the only formal remittance business registered to operate in Nauru, but the Ministry has no ongoing regulatory role. With the exception of excise and duties collected by Nauru Customs, Nauru is a tax-free jurisdiction and there is no experience in government with regulation of taxation matters. Since its establishment in 2004 the FIU has been the one financial regulatory institution in Nauru.

#### *Preamble: Law / Regulation / Other Enforceable Means*

346. All AML/CFT obligations in Nauru are set out in law through the Anti-Money Laundering Act 2008 (AMLA 2008). Preventative measures were set out in the earlier AMLA 2004 and 2006, but were superseded by the AMLA 2008. While the AMLA does provide for issuing regulations and other enforceable instruments, this has not been done as there has been no need with the absence of a financial sector beyond the single western union branch.

347. Nauru prepared two guidelines to cover Suspicious Transaction Report (STR) filing and Customer Due Diligence (CDD) and record keeping in 2007, which were distributed in 2009. The guidelines provide further practical detail of CDD and the forms for reporting STRs. The guideline was prepared to reflect obligations in the earlier AMLA 2004. The guidelines were provided to reporting entities in January 2009 by the FIU Supervisor ‘as information notes only’. This was done under section 8 of the AMLA 2008. However, the guideline is not regarded as other enforceable means since the guidelines are not enforceable and do not create any additional obligations.

348. The contents of the guidelines may give rise to some confusion as they cross reference the earlier AMLA 2004 rather than the AMLA 2008. In addition, the STR reporting form cross references the AMLA 2006.

**Table 8: Instruments setting out AML/CFT obligations on financial institutions**

<b>Instruments Setting Out AML/CFT Obligations on Financial Institutions</b>		
<b>Title</b>	<b>Date</b>	<b>Covered Sectors</b>
<b>Law / Regulation or Other Enforceable Means (OEM)</b>		
Anti-Money Laundering Act 2008	26/11/2008	All financial institutions & DNFBPs
<b>Guidelines (unenforceable)</b>		
Guideline 1 (2007) - STR reporting	Issued 2009	All financial institutions & DNFBPs - Covers STR Reporting
Guideline 2 (2007) – Customer Due Diligence & Record Keeping	Issued 2009	All financial institutions & DNFBPs - Covers CDD, record keeping, etc

***Preamble: Scope of application of preventative measures to financial institutions***

349. The AMLA takes an activity-based definition to including the coverage of financial institutions which fall under AML/CFT controls in Nauru. The definition of financial institutions substantially follows the language of the FATF standard and includes all 13 financial activities required under the standard.

350. At the time of the onsite visit, the only financial institutions operating in Nauru were those providing transfer of money or value services. The remitters active in Nauru only serve occasional customers. None of the financial institutions in Nauru conduct business which includes accounts and existing relationships.

**3.1. Risk of money laundering or terrorist financing**

351. Nauru has not taken any steps to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis of low or little risk of ML or TF.

- Nauru should conduct a risk assessment to support prioritised implementation of AML/CFT controls, taking into account the very small financial sector and few government resources.

**3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

***3.2.1 Description and Analysis***

***Legal Framework:***

352. Most of the requirements for Recommendations 5 to 8 are reflected in the Part 5 of the AMLA. The Nauru FIU has issued a guideline in relation to CDD and Record Keeping to assist financial institutions to meet their obligations under the AMLA.

**RECOMMENDATION 5**

***Prohibition of Anonymous Accounts (c. 5.1):***

353. The one financial institution registered in Nauru (MVTSS) does not provide for customers to keep accounts. There is a provision in relation to prohibition of anonymous accounts that is section 26 of the AMLA. The prohibition to have or maintain anonymous accounts rest both on the financial institution and its client. Subsection 26 (1) states that a person who opens, operates or authorizes the opening or the operation of an account with a financial institution in an anonymous or numbered account, or with a fictitious, false or incorrect name is guilty of an offence and shall be punishable on conviction. Furthermore, Section 26 (5) of the AMLA states that a financial institution that open, operate or maintain any anonymous or numbered accounts, or any account, which is in a fictitious, false or incorrect name, shall be guilty of an offence. Section 26 also explicitly states the penalty for the breach of this requirement.

***When CDD is required (c. 5.2):***

354. The requirements to take CDD upon a financial institution can be found in subsection 27 (1), which requires a financial institution to undertake CDD measures when:

- the financial institution enters into a continuing business relationship; or in the absence of such a relationship, conducts any transaction;
- carries out an electronic funds transfer other than designated electronic funds transfer or
- there is a suspicion of a money laundering offence or a financing of terrorism offence; or
- the financial institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

355. Also, section 27 (4) requires a financial institution to undertake CDD when a person conducts a transaction, other than an occasional transaction, below a prescribed amount and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons. In the absence of any threshold having been prescribed, CDD is required for all occasional transactions.

***Identification measures and verification sources (c. 5.3):***

356. Section 27(1) of the AMLA stipulates that a financial institution shall verify the identity of the customer (natural or legal persons) on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer. There is also the (unenforceable) CDD guideline issued by the FIU to assist financial institutions to meet their CDD obligations. The CDD guideline elaborates that identification should include a client's date of birth, address and occupation. The CDD guidelines include a list of documents that may be acceptable for verifying a person's or corporation's, identity. This list specifies documents that many Nauruans would not necessarily have, such as a passport or other official documents.

***Identification of Legal Persons or Other Arrangements (c. 5.4):***

357. The requirement to identify legal persons or other arrangement is included in the AMLA. In its definition, AMLA defines "identification record" as information relating to the identification of a person and the verification of the person's identity, including where the person is a natural person or a body corporate. The FIU CDD and Record Keeping guideline at sections 6-13 also explains how the financial institutions identifies or deals with natural or legal persons or legal arrangements.

***Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):***

358. There is no specific provision in AMLA or other laws in Nauru that requires financial institution to identify and verify the identity of the beneficial owner (including for legal persons or legal arrangement) using the financial service.

359. The only provision related with this issue is in subsection 27 (4) of AMLA that is the requirement to identify the beneficial owner. However, it **only** applies when a person conducts a transaction, other than an occasional transaction below a prescribed amount, and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons. The concept of beneficial owner is not further defined in the law or guidelines.

***Information on Purpose and Nature of Business Relationship (c. 5.6):***

360. AMLA addresses the subject of the purpose and nature of business relationships. Subsection 27 (2) AMLA states that a financial institution shall when establishing a business relationship, obtain information on the purpose and intended nature of the business relationship. This criterion is currently not applicable in Nauru.

***Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):***

361. Subsection 36 (4) of the AMLA stipulates that a financial institution shall conduct ongoing due diligence on the business relationship with its customer. This requires ongoing scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that the transaction being conducted is consistent with the financial institution's knowledge of the customer, the customer's business and risk profile. This includes, where necessary, the source of funds. The AMLA does not have any provision that requires a financial institution to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, including for higher risk categories of customers or business relationships. These criteria are currently not applicable in Nauru.

***Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):***

362. There is no specific provision in the AMLA requiring enhanced CDD for high risk customers except enhanced CDD for politically exposed persons.

***Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9), (c. 5.10) & 5.11:***

363. Nauru has not decided to allow for the application of simplified or reduced CDD measures for any category of transaction or customer. The CDD and record keeping guideline itself does not regulate the risk based application of CDD. These criteria are currently not applicable in Nauru.

***Timing of Verification of Identity—General Rule (c. 5.13):***

364. Subsection 27 (1) of the AMLA states that states that ‘

A financial institution shall identify and verify the identity of the customer when the financial institution enters into a continuing business relationship, or in the absence of such a relationship conducts any transaction.

***Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):***

365. Nauru does not contemplate permitting financial institutions to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship (exceptional circumstances). This criterion is currently not applicable in Nauru.

***Failure to Complete CDD before commencing the Business Relationship (c. 5.15):***

366. The AMLA covers scenarios where a financial institution is unable to complete CDD. Section 31 of AMLA states that:

If satisfactory evidence of the identity is not submitted to or obtained by a financial institution, the financial institution shall not proceed with the transaction and report the attempted transaction to the Financial Intelligence Unit as a suspicious transaction.

***Failure to Complete CDD after commencing the Business Relationship (c. 5.16):***

367. Section 31 states that if satisfactory evidence of the identity is not submitted to or obtained by a financial institution under this Part, the financial institution shall not proceed any further with the transaction unless directed to do so by the FIU. In this circumstance, the institution is required to report the attempted transaction to the FIU as a suspicious transaction. There is no obligation to terminate the business relationship. This criterion is currently not applicable in Nauru.

***Existing Customers—CDD Requirements (c. 5.17):***

368. There is no provision that requires financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. However, since the one financial institution operating in Nauru only has occasional customers, then such requirement is not currently applicable.

***Existing Anonymous-account Customers – CDD Requirements (c. 5.18):***

369. While there is no provision in the AMLA that requires financial institutions to perform CDD measures on existing anonymous customers, if they are customers to whom CDD criteria apply, there are currently no accounts opened, and thus there should not be a requirement in place. There are no financial institutions which hold customer accounts at present in Nauru; all customers are occasional customers.

**RECOMMENDATION 6**

***Foreign PEPs—Requirement to Identify (c. 6.1):***

370. The AMLA gives a definition of PEP as individuals who are or have been entrusted with prominent public functions in a foreign country. The definition includes the family members and close associates of those persons.

371. The requirement to perform CDD measures is stated in paragraph 27 (3) (a) that is the financial institution shall adequately identify and verify PEPs. In addition subsection 27 (3) requires financial institution to have appropriate risk management systems to determine whether the customer is a politically exposed person. The provision does not require financial institutions to determine whether the beneficial owner is a PEP.

***Foreign PEPs—Risk Management/approval (c. 6.2; 6.2.1):***

372. Paragraph 27 (3) (b) requires financial institutions to obtain the approval of senior management before establishing a business relationship with PEPs.

***Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):***

373. The requirement for the financial institutions to take reasonable measures to establish the source of wealth and source of funds is stated in paragraph 27 (3) (c).

***Foreign PEPs—Ongoing Monitoring (c. 6.4):***

374. The AMLA also requires a financial institution to conduct regular and ongoing enhanced monitoring of the business relationship (paragraph 27 (3) (e)).

***Domestic PEPs—Requirements (Additional Element c. 6.5):***

375. The AMLA define PEPs as individuals who are, or have been, entrusted with prominent public functions in a foreign country. The requirement to identify PEPs is not extended to those who hold prominent public functions domestically.

***Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):***

376. Nauru has not ratified the 2003 United Nations Convention Against Corruption (UNCAC). Nauru is giving close consideration to taking steps to become a party to the UNCAC.

**RECOMMENDATION 7**

***Cross Border Correspondent Accounts and Similar Relationships***

377. The AMLA contains comprehensive AML/CFT controls over cross-border correspondent accounts. At the time of the onsite visit, Nauru had no financial institution with cross border correspondent relationships or equivalent. In the absence of any banks in Nauru, residents rely on counterparty payment transactions outside of Nauru, in particular in Australia.

378. Section 28 of AMLA has detailed provisions in relation to cross border correspondent accounts and similar relationship. Paragraph 28 (1) (a) of the AMLA requires that a financial institution shall:

- adequately identify and verify the person with whom it conducts such a business relationship;
- gather sufficient information about the nature of the business of the person;
- determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject to;
- assess the person's anti-money laundering and terrorist financing controls;
- obtain approval from senior management before establishing a new correspondent relationship;
- document the responsibilities of the financial institution and the person.

**RECOMMENDATION 8**

***Misuse of New Technology for ML/FT (c. 8.1):***

379. The AMLA has no provisions regarding new technologies and the FIU has not issued any guidance or regulations to financial institutions. There are no banks in Nauru and only four businesses offering remittance. Discussions are currently underway with a mobile phone company to commence either an e-wallet service or act as a mobile banking channel for an Australian bank but it is not certain if this will eventuate. There are no provisions in the AMLA that require financial institutions, or any other institution, to have policies in place or take such measures as needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

***Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):***

380. The AMLA does not have any provisions to address non-face to face business transactions. No requirement exists in the AMLA to have financial institutions to develop and have in place policies and procedures to address specific risks associated with non-face to face business relationships.

## **Effectiveness**

381. There is no commercial bank in Nauru. The only financial institution is a Western Union branch. Nevertheless, in 2009 the FIU of Nauru supplied copies of the AMLA and guidelines to 22 businesses and government agencies that the FIU considered relevant. Most of these do not meet the definition of financial institution under the AMLA. STR reporting forms were distributed.
382. While a number of elements of CDD and related preventative measures are reflected in the Part 5 of the AMLA, the effective implementation of those measures has not been confirmed by supervision. Only one limited compliance audit of the registered remitter has been undertaken by the FIU.
383. Effective implementation of preventive measures for the financial institution has not yet been accomplished. The one registered remittance agent follows CDD standards set by its US parent and this meets with Nauruan law. As there has been no requirement in law to assess the risks of new technologies and non-face-to-face customer interaction, the few financial institutions that operate in the private sector have not considered this FATF requirement.

### **3.2.2. Recommendations and Comments**

- AMLA (and its guideline) should be revised to cover:
  - Identification of beneficial owners, legal persons or other arrangements;
  - Consideration of adopting a risk-based approach and enhanced due diligence for higher risk categories of customers, and the application of simplified or reduced CDD measures when appropriate, and consideration of when exceptional circumstances exist for the precise timing of verification of a customer's identity;
  - Terminating a business relationship when an institution is unable to complete CDD before or after commencing the business relationship;
  - Including CDD requirements upon existing customer for such time as Nauru has financial institutions that keep accounts;
- Consider extending measures to those PEPs who hold prominent public functions domestically;
- Amend the AMLA to include provisions for Recommendation 8 and issue new FIU guidelines to financial institutions on the necessary action that they should take;
- Nauru could consider becoming party to and fully implementing the 2003 UNCAC;
- Amend the AMLA to require financial institutions to:
  - have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or TF schemes; and
  - have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing due diligence.
- Issue new guidelines to financial institutions on the necessary action that they should take; and

- The FIU should establish adequate supervisory processes for financial institutions to support compliance and have a meeting on a regular basis regarding the state of compliance in each industry.

### 3.2.3. *Compliance with Recommendations 5 to 8*

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.5</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AMLA has gaps in coverage of identification of beneficial owners and enhanced CDD for high risk customers</li> <li>• While the AMLA has an obligation to identify and verify customers, the required elements of customer identity in the CDD process is only contained in unenforceable CDD guidelines</li> <li>• Effective implementation by the single financial institution operating in Nauru has not been established.</li> </ul>
<b>R.6</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Obligation to identify PEPs does not extend to beneficial owners of PEPs</li> </ul>
<b>R.7</b>	<b>NA</b>	<ul style="list-style-type: none"> <li>• Although the AMLA contains comprehensive AML/CFT controls over cross-border correspondent relationships, in the absence of any bank in Nauru at the time of the onsite visit, this recommendation is not applicable.</li> </ul>
<b>R.8</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Provisions are not evident in the law</li> <li>• No guidelines issued on new technology or non-face to face business</li> </ul>

### 3.3. Third Parties and Introduced Business (R.9)

#### 3.3.1. Description and Analysis

##### *Legal Framework:*

384. Use of third parties to conduct of CDD and introduced business are not forbidden under Nauru's AML/CFT system. Controls over third parties and introduced business are contemplated in the AMLA. Section 29 of the AMLA states that where a financial institution relies on an intermediary or a third party to undertake its CDD obligations or to introduce business to it, it shall –

- (a) immediately obtain the necessary information required by the law;
- (b) ensure that copies of identification data and other relevant documentation relating to the requirements in the law will be made available to it from the intermediary or the third party upon request without delay; and
- (c) satisfy itself that the intermediary or third party is regulated and supervised for, and has measures in place to comply with the requirements set out in this Part.

385. The AMLA does not address the ultimate responsibility for CDD resting upon the financial institution.

386. The one financial institution in Nauru does not entertain third party or introduced business arrangements. All of the services are done by the financial institution itself and all of the customers are occasional customers.

#### 3.3.2. Recommendations and Comments

- Revise the AMLA to cover ensure financial institutions who use of third parties to conduct their CDD requirements do so adequately and ensure that the ultimate responsibility for CDD resting with the financial institution and not the third party.. This will make certain that by the time third party and introduced business concept are put into practice, there will be provisions that cover the scheme.

#### 3.3.3. Compliance with Recommendation 9

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.9</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• Clarification of ultimate responsibility resting with the financial institution is not set out.</li></ul>

### **3.4. Financial Institution Secrecy or Confidentiality (R.4)**

#### **3.4.1. Description and Analysis**

##### ***Legal Framework:***

387. There is a secrecy provision provided under Section 7 of *Banking Act 1975* governing banks or financial institutions carrying out banking business in Nauru. However, section 25 of the AMLA overrides the secrecy provisions for these institutions in order to provide protection when fulfilling their obligations under the AMLA.

##### ***Secrecy Provisions Inhibiting Implementation of FATF Recommendations (c. 4.1):***

388. Section 25 AMLA obliges all financial institutions and Designated Non-Financial Businesses and Professions (DNFBP)DNFBPs as defined under the FATF standard, to comply with the requirements of the AMLA. Section 25 states in part that ‘...notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise’. This would override the secrecy provisions under section 7 of the Banking Act, in the event that an institution was licensed to operate under that statute. The provisions would not impede information sharing between parties in relation to Recommendations 7 and 9 and SR VII.

#### **3.4.2. Recommendations and Comments**

- The FIU should perform socialisation as well as supervision of the financial institution regarding requirements to disclose any information and document notwithstanding any obligation as to secrecy or other restriction.

#### **3.4.3. Compliance with Recommendation 4**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.4</b>	<b>C</b>	Fully observed

### **3.5. Record keeping and wire transfer rules (R.10 & SR.VII)**

#### **3.5.1. Description and Analysis**

##### **RECOMMENDATION 10**

###### ***Legal Framework:***

389. Broadly comprehensive legal obligations for record keeping are set out in section 35 of the AMLA. There are, however, no requirements in the AMLA for financial institutions to maintain records for business correspondence. The requirements of section 35 of AMLA are enforceable with a AUD50,000 fine for individuals and a AUD500,000 fine for a corporation for failure to comply with the Act. Nauru has not issued any implementation regulations regarding record keeping but has issued guidance to financial institutions in 2009.

###### ***Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):***

390. The AMLA at subsection 35(1) sets out that a financial institution should establish and maintain records of all transactions and associated transaction correspondence, reports made to the FIU and other law enforcement agencies. At subsection 35 (2) all records are to be kept so that they are accessible and any transaction easily reconstructed to be used as evidence. In particular paragraph 35 (2)(a) requires financial institution to retain information to identify the name, address and occupation (or business activity) of a person conducting a transaction. All transaction records must be kept for a minimum of five years (subsection 35 (3)). Guidelines on record keeping were issued by the FIU in Guideline 2 to financial institutions in 2009. The guidelines were written in plain English and The Guidelines included the record keeping obligations of section 35 of the AMLA.

391. In practice, the Western Union branch confirmed that it is keeping local records for five years.

###### ***Record-Keeping for Identification Data (c. 10.2):***

392. Paragraph 35(1)(b) of AMLA requires financial institutions to hold customer identification for five years from the time the relationship with the customer ceases, and identify and hold records where a third party is transacting on behalf of another (paragraph 35 (1)(a)ii)). The requirement for maintaining records of account files and business correspondence is not explicit in the AMLA, and this is a deficiency.

393. In the private sector the Western Union branch confirmed that he is keeping records of customer identification details for five years.

###### ***Availability of Records to Competent Authorities (c. 10.3):***

394. Timeliness of producing records to competent authorities is covered in AMLA subsection 35(4) where records must be produced immediately. Where a financial institution fails to comply with requests for transaction or customer identification data, the FIU can exercise its powers under section 13 of AMLA to direct an institution to comply with any part of AMLA without reasonable excuse. Where compliance is still not forthcoming the FIU can apply to the court for an order to direct the employees of a financial institution to comply with the FIU directives. Failure to meet a court order can result in a fine at the courts discretion, unless the financial institution can satisfy the court that it has a reasonable excuse for not complying. This requirement has been tested with one financial

institution failing to comply immediately with a request for financial records. The FIU exercised its powers under subsection 13(4) and sought a court order for the documentation, which were then produced.

## **SPECIAL RECOMMENDATION VII**

### ***Obtain Originator Information for Wire Transfers (c.VII.1, applying c. 5.2 & 5.3 in R.5.):***

395. In Nauru the only financial institution that conducts wire transfers on behalf of customers is the Western Union agency. Western Union uses its own communication network for making overseas payments and therefore originator information is known by the central compliance unit of Western Union once data is entered.

396. The AMLA at section 37 requires banks and money transmission services providers to include originator information with all electronic fund transfers or other forms of transfers. There is no threshold specified in the AMLA and therefore all wire transfer transactions are required to keep originator information. Credit and debit card payments are excluded if they are accompanied by the credit and debit card number. Transactions between financial intuitions where they are settling their own finances are also excluded. Originator information is not defined in the AMLA and section 37 does not specify what identification details should be included. FATF define full originator information as:

- the name of the originator
- the originator's account number (or unique reference number if no account held)
- the originators address or national ID number or customer ID number or date and place of birth).

397. The requirements for financial institutions to obtain customer information are contained in section 26 of AMLA (anonymous or numbered accounts and accounts in fictitious names or incorrect names) and section 27 (customer due diligence). These sections set out in detail the requirements to exclude anonymous accounts and what basic customer information is required for account opening and for occasional transactions, which could be used to provide originator information. Refer to section 3.2 of this report for details on CDD. The FIU has not issued any regulations or a guideline to further expand or explain what full originator information is.

### ***Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2 and VII.4):***

398. The obligation to include originator information for cross border wire transfers is contained in sections 27 and 37 of AMLA. Financial institutions are required under section 27 to verify the identity of a customer using reliable and independent source documents before account opening or conducting an occasional transaction. Section 27 does not elaborate the required elements of customer identity which may be required for full originator information. However, (unenforceable) CDD guideline issued by the FIU elaborates that identification should include verifying a client's date of birth, address and occupation.

399. Subsection 37 (1) requires that full originator information remains with the transfer and this would imply that it remains through a chain of payments. No further information is supplied to define originator information in section 37 or in the definitions section of the AMLA. Section 28 of AMLA also requires financial institutions to establish arrangements with other financial institutions where a

payable through account is used to ensure full customer identification data can be provided to the beneficiary institution upon request.

***Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):***

400. Nauru does not address requirements for domestic wire transfers separately and none are currently conducted as there are no banks on the island. Section 37 requires banks and money transmission services providers to include originator information with all electronic fund transfers or other forms of transfers no matter what their destination.

***Processing of Non-Routine Transactions (c.VII.4):***

401. There are no specific provisions or exceptions in the AMLA regarding technical limitation issues or specific record keeping requirements.

***Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):***

402. There are provisions in paragraph 36 (2)(b) of the AMLA that requires financial institutions to pay special attention to electronic funds transfers that do not contain complete originator information. While section 36 does not specify the development of risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information, it does require a financial institution to examine, as far as possible, the background and purpose of the transaction or business relations and record its findings. The requirement to report any transaction that the financial institution considers is suspicious is included in section 13 of AMLA. There is no requirement for a beneficiary financial institution to consider restricting or terminating a relationship with another financial institution if they do not meet SRVII although in paragraph 28(1)(d) a financial institution needs to assess the AML/CTF controls of another institution it wishes to enter business relations with. Nauru has not provided any specific guidance on examining wire transfers although it has, in Guideline 2, included information on unusual, complex or large transactions. There is only one financial institution that receives and sends wire transfers in Nauru and this is an agent of Western Union. Western Union is subject to US AML/CFT laws.

***Monitoring of Implementation of SR VII (c. VII.6):***

403. There are no measures in place to monitor financial institutions for SRVII. No rules have been issued by the FIU regarding wire transfers beyond sections 36 and 37 of AMLA. The FIU has not conducted any monitoring of wire transfers to date.

404. The FIU has only one staff member (the FIU Supervisor) and limited budget and has no AML/CTF examination program at this time. The FIU Supervisor has stated she will be drafting its annual business plan by 31 December 2011, which will include strategies for developing a compliance program. While the FIU has conducted one on-site visit to a financial institution conducting wire transfers, and transfer data copied, no analysis of the originator information was conducted.

***Sanctions (c. VII.7, applying c. 17.1-17.4 in R.17.)***

405. The FIU, under subsection 8(g), can direct a financial institution to undertake any steps to comply with the AMLA. Section 12 of the AMLA gives the FIU the power to examine any records and section 13 can be used to enforce compliance. Failure by a financial institution to keep records of

wire transfers could result in a fine not exceeding AUD50,000 for an individual and not exceeding AUD500,000 for a corporation (subsection 35(6)). There are no specific penalties if originator information is omitted.

***Additional elements: Maintenance of incoming Originator Information (c. VII.8):***

406. Nauru does not cover maintenance of incoming originator information in the AMLA, only outgoing originator information is required under section 37.

***Additional elements: Restrictions on De Minimis Threshold (c. VII.9):***

407. Nauru does not stipulate a *de minimus* threshold in the AMLA. All outgoing wire transfers are required under paragraph 37(9)(1) to contain full originator information, even though ‘full originator information’ is not defined.

**3.5.2. Recommendations and Comments**

- Nauru should require records of business correspondence to be kept.
- Nauru should define ‘full originator information’ in its AMLA or through regulation.
- Effective AML/CFT supervision should be undertaken for the financial institution providing wire transfer services.
- Guidance should be issued to the financial sector on wire transfers, including on what constitutes ‘full originator information’.

**3.5.3. Compliance with Recommendation 10 and Special Recommendation VII**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.10</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The requirement to keep records of business correspondence is not fully covered.</li> </ul>
<b>SR.VII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Definition of ‘full originator information’ not given so it is not defined clearly what information should be included</li> <li>• There is no detailed instruction issued by the competent authorities to financial institutions on the requirements of SRVII.</li> <li>• No effective monitoring to date</li> </ul>

### **3.6. Monitoring of Transactions and Relationships (R.11 & 21)**

#### **3.6.1. Description and Analysis**

##### ***Legal Framework:***

408. Nauru has addressed the issue of paying special attention to transactions in the AMLA at section 36 (monitoring of accounts and transactions) and at section 35 (record keeping). The FIU has issued a Guideline to financial institutions (Guideline 2). No other regulations have been issued.

##### ***Special Attention to Complex, Unusual Large Transactions (c. 11.1):***

409. Subsection 36(1) requires financial institutions, including money remitters and trust and company service providers to pay special attention to complex, unusually large or unusual patterns of transactions that have no apparent lawful or economic purpose. Financial institutions are required to examine such transactions and, as far as possible, the background and purpose of the transaction.

##### ***Examination of Complex & Unusual Transactions (c. 11.2):***

410. Paragraphs 36 (1)(a) and (1)(b) require financial institutions, including money remitters and trust and company service providers, to pay special attention to complex, unusually large or unusual patterns of transactions that have no apparent lawful or economic purpose. This includes wire transfers where full originator information is missing. Subsection 36(4) stipulates that financial institutions shall conduct ongoing CDD on the business relationship and ongoing scrutiny of the customers' transactions to ensure that they fit the profile of the customer and the institutions understanding of the customer's business.

411. The FIU has conducted one onsite examination and requested documents where it suspected complex, unusually large or unusual patterns of transactions that have no apparent lawful or economic purpose had occurred.

412. The Western Union agent indicated that his processes for examining of complex, unusual, and large transactions were in addition to the Western Union company's transaction monitoring and red flag system.

##### ***Record-Keeping of Findings of Examination (c. 11.3):***

413. Financial institutions are required by paragraph 36(3)(a) of AMLA to record their findings of any examination of unusual transactions and to make these available to the FIU on request. Under subsection 35(4) these written reports must be maintained in an accessible form and be made available upon request. The FIU has power under section 12 to request any documentation.

##### ***Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):***

414. Paragraph 36(2)(a) of the AMLA requires financial institutions to pay special attention to its business relations or financial transactions in jurisdiction not applying FATF recommendations adequately. The FIU included some of this requirement in Guideline 2 issued to all financial institutions in 2009 but Guideline 2 did not provide information on how to determine such high-risk jurisdictions. The FIU has not provided in that guidance a list of countries that were not meeting

FATF requirements nor where a financial institution can find such information. The FIU does not publish current information on this matter.

***Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):***

415. Examinations of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF recommendations is covered in the AMLA in paragraph 36(2)(a) and subsection 36(3) which require the financial institution to examine, as far as possible, the record its business relations and purpose of the transactions with its customers and to make note of its findings if there are unusual transactions. Section 35 requires these records be proved to the FIU upon request. In practice the one financial institution in Nauru (Western Union) uses its own local knowledge to conduct enhanced CDD on transactions where it could not clearly understand the purpose or nature of the transaction in addition to its overseas parent’s automated monitoring system to flag such cases.

***Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):***

416. There are no specific provisions for the application of counter measures in Nauru. Section 97 of the AMLA provides a basis for the Cabinet to make regulations on any aspect of the Act, at such a time as it may be required. It would appear possible for Nauru to issue a regulation on possible countermeasures to implement Recommendation 21.

***3.6.2. Recommendations and Comments***

- Require record keeping for findings in relation to unusual transactions.
- Guide financial institutions on how to identify jurisdiction not applying FATF recommendations and adequately clarify the requirements regarding special monitoring of transactions to or from countries with weak AML/CTF regimes.
- Disseminate information to financial institutions about weaknesses in the AML/CTF systems of other countries.
- Consider using section 97 of the AMLA as a basis for the Cabinet to make regulations on provisions to apply counter-measures to countries that continue not to apply, or insufficiently apply, FATF Recommendations and conduct transactions with Nauru.

***3.6.3. Compliance with Recommendations 11 & 21***

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.11</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Gap in explicit requirement for record keeping for findings in relation to unusual transactions.</li> </ul>
<b>R.21</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No guidance to financial institutions on how to identify which countries have weak AML/CTF regimes</li> <li>• There is no legal authority to apply a range of appropriate countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.</li> </ul>

### **3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)**

#### **3.7.1. Description and Analysis**

##### **RECOMMENDATION 13 and SRIV**

###### ***Legal Framework:***

417. Nauru has included requirements to report suspicious transactions in section 17 of AMLA. Section 17 requires financial institutions to make a report where it suspects or has reasonable grounds to suspect that any transaction, or attempted transaction, may be related to the commission of ML, TF or an unlawful activity. The filling of suspicious reports is mandatory and failure to report can result in imprisonment of an individual for a maximum of 10 years and a fine up to AUD50,000 or for a corporation a fine of AUD500,000. Money laundering is defined in the AMLA as acquiring, possessing and using property knowingly and concealing disguising, converting and transferring property that is connected to the proceeds of crime. Proceeds of crime relate to any property derived from any unlawful activity. There is no threshold limit to making a suspicious report except under the definition of unlawful activity. For suspicious transaction reporting unlawful activity excludes those crimes where the sentence is less than 12 months imprisonment. For a full discussion on the ML offence refer to section 2.1 of this report.

###### ***Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):***

418. Subsection 17(1) provides that where a financial institution has reasonable grounds to suspect that a transaction involves funds that relate to ML or TF, the institution must make a report within two business days to the FIU. The report is to be in writing on a form prescribed by the FIU that contains a statement as to the grounds for suspicion and must be signed by the representative of the financial institution. STR reports can be made verbally to the FIU if followed up within 24 hours by a written report.

419. Suspicious transactions are required to be submitted for any unlawful activity. An unlawful activity is defined in the AMLA as an activity, which under any law anywhere is a crime, other than non-payment or avoidance of taxation. This would include foreign and domestic offences. A suspicious transaction report does not need to be submitted if the suspicion pertains to an unlawful activity that is punishable for less than 12 months imprisonment. The *Queensland Crimes Act 1899*, which covers most unlawful activities, dates from the nineteenth century and was adopted in 1922. Many of the offences are out-dated and the Act does not comprehensively cover all offences required by FATF. Refer to section 2.1 in this report for details of coverage of predicate offences.

###### ***STRs Related to Terrorism and its Financing (c. 13.2):***

420. Subsection 17(1) of the AMLA includes the reporting of suspicious transactions, or attempted transactions, with regard to the financing of terrorist activities. Foreign terrorism and TF offences are covered in section 17. The provision and collection of funds for the purposes of terrorist acts is sufficiently covered by criminalisation of terrorism in the CTTOC. Criminalisation of financing terrorist organisations and individual terrorists is, however, limited to those organisation designated by the Minister for Justice and Border Control. At the time of the onsite visit no terrorist organisations were designated rendering the relevant provisions inactive. Refer to section 2.2 of this

report for a fuller description of TF covered in the CTTOC. In practice there have been no STRs lodged with the FIU on terrorist matters.

***Attempted Transactions (c. 13.3):***

421. Paragraph 17(1)(a) includes the provision for filing suspicious reports in cases where a person attempts to undertake a transaction but it is not executed.

***Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):***

422. Tax matters are excluded from the requirement to report suspicious transactions.. Nauru has neither company nor income tax. Small excise and duties are imposed on the import of goods and export of cash. The AMLA, in its definitions section, states that unlawful activity excludes non-payment or avoidance of taxation. The Nauru government is currently considering the enactment of a goods and services tax and will need to review the provision of exempting tax from suspicious reporting obligations if this legislation is passed.

***Additional Element - Reporting of All Criminal Acts (c. 13.5):***

423. Nauru does not take an all-crimes approach to STR reporting.

**RECOMMENDATION 14**

***Protection for Making STRs (c. 14.1):***

424. Part 4 section 22 of AMLA provides protection to persons filing a suspicious report. Subsection 22(1) states that no civil, criminal or disciplinary proceedings shall be taken against either a financial institution, an auditor or a supervisory authority of a financial institution or its officers, employees or agent if that person in the course of their duties carries out reporting a suspicious transaction (or its attempt) per the requirements of section 17 of the AMLA. The FIU has issued guidelines (Guideline 1) that further explains protections for financial institutions and their employees under these provisions. As no STRs have been filed with the FIU, this provision remains untested.

425. Subsection 21(2) restricts the FIU and others in revealing any information concerning STRs, including those reporting the information, in judicial hearings unless a Judge (or other presiding officer) considers that in doing is necessary for the course of justice.

***Prohibition Against Tipping-Off (c. 14.2):***

426. Tipping-off provisions are included in sections 20 and 21 of AMLA. The provisions prohibit disclosure by any person of information relating to transactions where a suspicious report has been filed. It also prohibits disclosure of information about the person who prepared the report, about any persons who are the subject of the suspicious report or any other information contained within the report or information that has been subsequently submitted to the FIU. There are penalties for breaching tipping off provisions listed at subsection 20(6) of the AMLA. Penalties include 10 years imprisonment for an individual and AUD40,000 fine, or a AUD400,000 fine in the case of a body corporate. The tipping-off provisions have been communicated to financial institutions in 2009 in Guideline 1. The financial intuition has acknowledged receipt of Guideline 1 and records of the receipt are kept by the FIU.

## **RECOMMENDATION 19**

### ***Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):***

427. Nauruan authorities gave consideration to including a cash transaction reporting (CTR) regime during inter-agency discussion ahead of the passage of the AMLA in 2009. This included discussions with the technical assistance donor assisting Nauru with the drafting of the bill. A CTR system was ultimately not included in the final AMLA.

## **RECOMMENDATION 25**

### ***Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):***

428. The FIU was established in 2004 and issued guidelines to financial institutions on STRs in 2009, although the guidelines reference the earlier legislation and are therefore out of date. The guideline includes common red flag indicators, the mandatory requirement to file reports, and protection and tipping off provisions were explained in simple and clear language. The guidelines included a copy of one STR form. The FIU has not issued further guidance nor held any information sessions for the financial sector. The FIU has exercised its powers under section 12 to examine reports in the case of one financial institution where the FIU was concerned that suspicious reports should have been made. A letter to the financial institution following the review did not explain the reasons for action nor provide any feedback on the FIU's analysis of the reports that were provided, although the FIU has been in touch with the institution concerned regarding the manner in which the examination took place. Evidence submitted to the assessors showed that feedback on unusual and complex transactions could have been provided. As there have been no STR reports to the FIU, it is not in a position to publish statistics on the matter. The FIU has not published an annual report.

### **Analysis of effectiveness**

429. No STRs have been submitted to the Nauru FIU in the past for either ML or TF. While guidelines have been issued no outreach to educate the financial institution on the AML/CTF obligations has been undertaken.

430. Discussions with financial institutions during the onsite indicated two possible instances where STRs should have been submitted but were not because of a lack of awareness of what constitutes a suspicious transaction.

431. The FIU does not have a policy, process or any system in place to provide feedback to financial institutions on STR reporting, emerging trends or typologies.

432. The assessors were of the opinion that Nauru has a low risk of ML and a very low risk of TF because of the size of its financial sector, its remoteness and difficulty to access. The fact that no STRs have been lodged for TF is not unexpected.

433. Gaps in the coverage of the scope of the ML offence (coverage of predicate offences) may undermine the effectiveness of the STR reporting obligation.

### 3.7.2. Recommendations and Comments

434. While the total number of financial institutions is minimal, the fact that no STRs have been filed in three years since guidelines were issued indicates implementation of this criterion is ineffective.

- Develop policies and procedures for STR feedback and advise financial institutions accordingly.
- Conduct outreach to the financial institution so that they better understand their obligations to submit STRs when they form a suspicion that a transaction may be related to ML, TF or a predicate offence.
- Amend the AMLA to include all unlawful activities as predicate offences.
- Issue revised guidance to reflect current legislative obligations
- Consider amending the AMLA to cover tax issues if a goods and service tax is implemented.
- Expand the TF offence in keeping with international standards to support the TF STR reporting obligation.
- Gaps in the coverage of predicate offences as outlined in section 2.1 of this report should be addressed.

### 3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Gap in domestic predicates impacts on the scope of coverage of ML</li> <li>• Funding of an individual terrorist or funding a terrorist organisation in Nauru, other than one designated, is not included as an STR reporting obligation.</li> <li>• No STRs have been filed and effectiveness has not been established</li> </ul>
<b>R.14</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
<b>R.19</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited guidance issued, which does not reflect current legislative obligations</li> <li>• The FIU does not have policies, procedures or systems in place to provide feedback.</li> <li>• The FIU has not held information/education sessions for industry to explain the STR obligations</li> <li>• The FIU has not provided constructive feedback</li> </ul>
<b>SR.IV</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Funding of an individual terrorist or funding a terrorist organisation in Nauru, other than one designated, is not included as an STR reporting obligation.</li> </ul>

### **3.8. Internal Controls, Compliance, Audit & Foreign Branches (R.15 & 22)**

#### **3.8.1 Description and Analysis**

##### **RECOMMENDATION 15**

###### ***Legal Framework:***

###### ***Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):***

435. Paragraph 24(1)(b) of the AMLA requires a financial institution to establish and maintain procedures and systems to CDD, record keeping, transaction monitoring and suspicious transaction reporting.

436. Paragraph 24(1)(a) requires financial institution to appoint a compliance officer who shall be responsible for ensuring the financial institution's compliance with the requirements with the AMLA. This section does not stipulate that the compliance officer should be at management level.

###### ***Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):***

437. The provision does require financial institution to establish an audit function to test its AML/CFT procedures and systems (paragraph 24 (1)(c)). However, the requirement to have an audit function is not explicitly stated and there is no requirement for the audit function to be independent.

###### ***Ongoing Employee Training on AML/CFT Matters (c. 15.3):***

438. Subparagraph 24(1)(b)(vi) requires financial institution to make its officers and employees aware of the AML/CFT procedures and policies adopted by it. There is a further requirement under paragraph 24(1)(d) to train officers, employees and agents to recognise suspicious transactions. The AMLA does not state, however, that any other employee training is required, nor that AML/CTF training should be on an ongoing basis.

###### ***Employee Screening Procedures (c. 15.4):***

439. The AMLA at subparagraph 24(1)(b)(vii) requires financial institution to screen persons before hiring them as employees. No further guidance is given on what this screening should cover.

##### **RECOMMENDATION 22**

###### ***Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):***

440. Section 24(3) of the AMLA addresses controls in relation to foreign branches and subsidiaries. At the time of the onsite visit, there were no financial institutions in Nauru which maintained branches or subsidiaries.

441. Subsection 24(3) requires financial institutions to ensure that their foreign branches and majority owned subsidiaries adopt and observe measures consistent with the AMLA to the extent that local laws and regulations permit. The provision does not extend to a requirement to pay particular attention to this principle in countries which do not sufficiently apply the international standards. Nor does it extend to cases where the home and host country requirements differ, and that the institution should apply the higher standard.

***Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):***

442. Subsection 24(3) of the AMLA appears to address the requirement where local rules prohibit the observation of appropriate measures for the institution to inform the home supervisor. The language leaves some doubt as the requirement is for a report to be made to the host or home supervisor or FIU.

“A financial institution shall ensure that its foreign branches and majority owned subsidiaries adopt and observe measures consistent with this Act to the extent that local laws and regulations permit and where the foreign branch or subsidiary is unable to adopt and observe such measures, to report the matter to the relevant supervisory authority or in the absence of a supervisory authority to the Financial Intelligence Unit”.

**Effectiveness**

443. While many of the requirements of Recommendation 15 are reflected in the section 24 of the AMLA, the one supervision audit did not focus on internal controls to assess effectiveness. Discussions with the financial institution indicated that the institution closely follows the Western Union group policy, including training front line staff on AML procedures and controls.

**3.8.2. Recommendations and Comments**

- Section 24 of the AMLA should be revised to cover the requirement of the financial institution to have an independent audit function and compliance officer. Also, the requirement to train employees should be on an ongoing basis.
- Implementing controls over foreign branches or subsidiaries is not applicable at present. To ensure that Nauru is prepared for possible future expanded financial sector, Nauru should at some stage:
  - require financial institution to pay particular attention to the need to apply home country requirements in host jurisdiction which do not sufficiently apply the international standards.
  - Ensure that in cases where the home and host country requirements differ, the institution should apply the higher standard.
  - Clarify that financial institution should inform their home supervisor when they are prevented from observing appropriate AML/CFT controls.

**3.8.3. Compliance with Recommendations 15 & 22**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.15</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Audit requirements do not stipulate the need for independent audit and there is no independent audit function.</li> <li>• Compliance officers are not required to be at management level.</li> <li>• No clear obligation for employee training to be ongoing</li> <li>• Effectiveness is neutral</li> </ul>
<b>R.22</b>	<b>NA</b>	<ul style="list-style-type: none"> <li>• This is covered in the AMLA, but there are no relevant financial institutions in Nauru</li> </ul>

### 3.9. Shell Banks (R.18)

#### 3.9.1. Description and Analysis

##### *Prohibition of Establishment Shell Banks (c. 18.1):*

444. Since 2004 Nauru has not approved the establishment of or accepted the continued operation of shell banks. During 2003 and 2004 Nauru made a number of amendments to the *Banking Act 1975*, the *Corporations Act 1972* and the *Act 2008 (AMLA)* AMLA to prohibit the establishment and operation of shell banks from Nauru. Regulatory action taken at that time wound up the operation of the legacy offshore banking licenses. The government of Nauru has no plans to reinstitute shell banks or offshore banking at any stage.

##### *Prohibition of Correspondent Banking with Shell Banks (c. 18.2):*

445. There are no prohibitions on establishing respondent banking relationships with shell banks. At the time of the onsite visit there were no banks or other financial institutions which could enter into respondent relationships with other financial institutions, including shell banks.

##### *Requirement to Satisfy Respondent Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):*

446. There are no requirements in the law or other enforceable instruments requiring financial institutions to prohibit the use of their accounts by shell banks. At the time of the onsite visit there were no banks or other financial institutions which could enter into respondent relationships.

#### 3.9.2. Recommendations and Comments

- Include a clear prohibition on the established and continued operation of shell banks in the Corporations Act.
- At such time that a bank is established in Nauru, ensure a clear prohibition on maintaining a respondent banking relationships with shell bank.
- At such time that a bank is established in Nauru, ensure financial institutions operating in Nauru are required to be satisfied that their respondent financial institutions prohibit correspondent financial institutions maintaining accounts with shell banks.

#### 3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"><li>• No clear prohibition on maintaining a respondent banking relationships with shell bank</li><li>• No binding requirements to ensure that in the future, financial institutions in Nauru are not permitted to allow their correspondent financial institutions to have respondent institutions which are shell banks</li></ul>

### **3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)**

#### ***3.10.1. Description and Analysis***

##### **Authorities/SROs roles and duties & Structure and resources - R.23, 30**

447. Under the AMLA, all financial institutions are supervised by the FIU for AML/CFT purposes. To date, the FIU has only once actively supervised the one financial institution regulated by the FIU (a remittance company) alternative remittance sector. There is only one person employed by the FIU and that person also holds other roles within the Nauru administration, including the Registrar of Corporations.
448. The Ministry of Justice and Border Control only undertakes a business licensing function and has no supervisory role in relation to AML/CFT in relation to these entities. All prescribed businesses must be registered and hold a business licence under the *Business Licences Act 2011*.
449. The Minister of Finance has authority under the Banking Act to issue banking licences and oversees prudential regulation. There is no longer a central bank in Nauru and there are currently no banks, insurance companies nor securities brokers licensed to operate in Nauru.
450. Legislation relevant to the supervisory authorities are:
- *The Corporations Act 1972*
  - *Foreign Trust, Estates and Wills Act 1972*
  - *Banking Act 1975*
  - *The Anti-Money Laundering Act 2008/2004*
  - *The Business Licence Act 2011*

##### **Designated supervisory authorities and application of AML/CFT measures**

###### ***Legal Framework:***

###### ***Regulation and Supervision of Financial Institutions (c. 23.1):***

451. The Nauru FIU has powers to supervise financial institutions for AML/CTF purposes. Subsection 8(f) of the AMLA gives the FIU authority to carry out examinations of financial institutions and section 12 sets out the parameters of that examination to ensure compliance with the AMLA. Section 12 gives the FIU (or any person it authorises) powers to examine records and inquire in to the business and affairs of any financial institution to ensure compliance with the AMLA. It also gives the FIU the authority to enter premises and examine records or data and make copies of these records. The FIU can transmit these records to appropriate domestic or foreign law enforcement if the FIU suspects that the records pertain to a suspicious activity, or are relevant to non-compliance with the AMLA.
452. The FIU, under section 13, can direct financial institutions that fail to comply with the AMLA to take reasonable action to rectify any omissions. Where financial institutions do not comply with FIU directives, the FIU can enforce compliance through Court order (subsection 13(3)). Under this subsection the Court may determine penalties for failing to comply with a Court order.

***Designation of Competent Authority (c. 23.2):***

453. The FIU has been given supervisory powers and the responsibility to inspect all financial institutions to ensure compliance with the AML/CTF requirements.

**Structure and resources of supervisory authorities**

***Adequacy of Resources for Competent Authorities (c. 30.1):***

454. The FIU appears to lack resources to undertake monitoring and supervision. FIU staff have not been trained in monitoring and supervision.

***Integrity of Competent Authorities (c. 30.2):***

455. Integrity of the FIU appears to be high.

***Training for Competent Authorities (c. 30.3):***

456. Nauru is reliant on foreign training to improve the skills of supervisory authority.

**Authorities Powers and Sanctions – RECOMMENDATIONS 29 & 17**

***Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):***

457. The FIU has adequate powers to monitor and ensure compliance by financial institutions with the requirements to combat money laundering and terrorist financing. The FIU has been given the responsibility to inspect financial institutions to ensure compliance with AML/CFT requirements. As previously noted section 12 of the AMLA gives the FIU power to examine financial institutions records and compliance with the AMLA.

***Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):***

458. The FIU has authority to conduct inspections of financial institutions under subsection 8 (f), including onsite inspections and enquire into any of the financial institutions business affairs to ensure compliance with the AMLA. Powers of inspection are contained within section 12 (powers to examine) where the FIU can enquire or examine records (including data and computer systems) or any business affairs of a financial institution.

***Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):***

459. Subsection 12(2) of AMLA compels the owners and any employees to render assistance to the FIU during inspections and to supply records as requested by the FIU. This is enforceable under subsection 12(4). Paragraph 36(3)(b) requires a financial institution to provide a copy of its findings for complex, unusual and large transactions in writing when sought by the FIU.

***Powers of Enforcement & Sanction (c. 29.4):***

460. As previously noted section 13 of the AMLA gives the FIU the power to seek Court orders where a financial institution fails to provide information, with penalties for non-compliance set at fines not exceeding AUD2000 or not exceeding six -months imprisonment for individuals and a fine not exceeding AUD30,000 by body corporate. Sanctions can be applied for failing to comply with sections 17 (suspicious reporting) 19 (providing false statements) 20 (disclosure of STRs and other

information) 26 (operating anonymous or numbered accounts) 27 (CDD requirements) 28 (cross border financial arrangements with other banks) 29 (agents and third parties) and 36 (record keeping requirements). The AMLA is not clear whether the FIU has enforcement powers to sanction directors or senior management as only individuals as employees of a financial institution are mentioned.

***Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):***

461. Sanctions in the form of fines and imprisonment for individuals and corporations, for either non-compliance with the AMLA or obstructing FIU investigations, are stipulated in the AMLA at relevant sections. The enforcement provisions are persuasive, if not somewhat dissuasive, but in some instances excessive in parts. Most carry 10 year imprisonments and fines of AUD50,000 for individuals and AUD500,000 for body corporate.
462. In the case of failing to lodge an STR, for example, an individual can face 10 years imprisonment and an AUD50,000 fine (subsection 17(4)).
463. The AMLA also provides for other sanctions at section 12. Section 12 empowers the FIU to issue directives or require financial institutions to develop action plans to rectify poor compliance. Section 13 allows the FIU to seek a court order if a financial institution fails to meet these. The Court can determine fines if these orders are breached without reasonable excuse (subsection 13(4)). The FIU does not have any other tools, such as penalty notices, to sanction financial institution that would be proportionate for lesser breaches of the AMLA.
464. The FIU cannot revoke licences. The Finance Minister has the power in section 21 of the Banking Act to cancel banking licenses where there is a breach of licence conditions, but as there are no banks operating in Nauru this is inactive.
465. Subsection 13(4) of AMLA applies fines or imprisonment for failing to lodge STRs to individuals and body corporate and at 13(5) if the financial institution fails to provide follow up information. Section 19 of AMLA imposes similar sanctions for making false or misleading statements in regard to suspicious transactions and subsections 20(6) and (7) for disclosing STR information to third parties knowingly. The Ministry of Justice can fine a business for non-compliance with the conditions set out in its business licence under section 11 of the Business Licensing Act (penalty AUD10,000), which according to the Secretary of Justice, and Border Control includes breaching any laws of Nauru, including requirements set out in the AMLA.
466. Where a financial institution contravenes any of the CDD, cross-border banking controls or adequately monitors and ensures compliance of third parties it may use in the CDD process; the financial institution can face fines similar to those already mentioned, or imprisonment of individuals for 15 years.

***Designation of Authority to Impose Sanctions (c. 17.2):***

467. The Nauru ODPP is the primary entity that applies to the courts for sanctions under the AMLA on behalf of the FIU. The FIU can apply administrative sanctions under section 12 of AMLA (directives and compliance action plans) and have these enforced by court order (section 13) when a financial institution or its employees refuse to comply without reasonable excuse. There are no financial penalties without court conviction.

***Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):***

468. There are no specific sanctions in the AMLA for directors or for senior management of financial institutions. The AMLA only refers to individuals and body corporate. There have been no cases to date that can show at what level of employee these sanctions would apply to. In subsection 13(4) a Court can fine any officer or employee as the Court determines for failing to meet FIU requests.

***Range of Sanctions—Scope and Proportionality (c. 17.4):***

469. The scope of sanctions is limited to fines imposed by the court and imprisonment of individuals and fines for body corporate. Fines are in the range of AUD40,000 to 50,000 for individuals and AUD400,000- 500,000 for a body corporate. Only in one situation (hindering investigations paragraph 12(4)(a)) is the fine AUD2000 for an individual and imprisonment is six months. Imprisonment for individuals is either 10 or 15 years in all other instances. There appears to be no gradation in the terms of imprisonment to allow the courts to impose lesser terms.

470. There is no ability for the FIU to impose smaller fines through notices. The FIU can issue directives and require the financial institutions to undertake certain actions to meet their obligations under the AMLA only. The FIU cannot revoke business licences, bar individuals from holding office in a particular financial sector nor restrict the powers of directors or senior management.

**Market entry – Recommendation 23**

***Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):***

471. The Minister of Finance has the responsibility to approve banking licenses and through the Department of Finance set licence conditions. *The Banking Act 1975* does not specify a full ‘fit and proper’ person test but does in subsection 14(1) prohibit a person taking part in the management of a bank where a bank has been wound up by a Court in Nauru (or in the case of a foreign corporation in that jurisdiction), who has been convicted by a Court in Nauru, or elsewhere, of dishonesty, or has been adjudicated bankrupt or insolvent. For other financial institutions that are incorporated in Nauru (or elsewhere) the Minister under section 108 of the Corporations Act may, by notice in the Government’s Gazette, order a person to be disqualified for being a director or holding management of a company if they have committed an offence in the promotion, formation or management of a company, been convicted by a court of fraud or dishonesty or is an undischarged bankrupt or insolvent.

***Licensing or Registration of Value Transfer/Exchange Services (c. 23.5) :***

472. There are no special provisions for licensing or registering value transfer or exchange services. If a business were to establish itself for the sole purpose of value transfer/exchange it would be subject to normal business registration under the Business Licenses Act and/or Corporations Act if incorporating. The businesses currently providing alternative remittance services and the one formal remittance service in Nauru do so as an added service to their existing business (which in the main are general stores). The corporation that acts as a Western Union agent has registered the remittance service part of its business through letters of exchange with the Ministry of Justice that administers the Business License Act.

***Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):***

473. Alternative remittance providers are the only non-prudential financial institutions in Nauru. They are subject to supervision by the FIU as they are listed in the AMLA Schedule as a financial institution. To date only the Western Union agent has been subject to onsite supervision in regard to suspect reporting. All businesses providing alternative remittance have been issued with Guideline 1 on lodgement of STRs and Guideline 2 on CDD and record keeping.

**Ongoing supervision and monitoring – RECOMMENDATION 23**

***Application of Prudential Regulations to AML/CFT (c. 23.4):***

474. There are no banks, insurance companies or securities market in Nauru. The Bank of Nauru is currently in liquidation. The *Bank of Nauru Act 1976* does not meet current Basel standards for prudential regulation and needs updating to attract a bank to operate in Nauru as the Government of Nauru desires. The Insurance Act has been repealed.

***Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):***

475. There are at least four alternative remittance providers in Nauru. One is the Western Union agent which has already been subject to one onsite inspection. The others operate from general stores and provide their service to government agencies, businesses or in some instances, individuals to ensure their cash flow to pay suppliers in Australia. By providing cash for payroll to government departments and Republic of Nauru Phosphate company (RONPhos) on the island, the general stores' Australian bank accounts are credited with an equivalent amount by RONPhos or the government agency through bank to bank transfer in Australia. The general stores' provide an alternative remitters service for Nauruans in Australia wishing to remit funds to their families in Nauru. These services are a small part of the general stores' business and exist because there are no formal banking channels on the island. As stated at section 3.7 and 3.10 of this report guidelines on STRs and CDD have been issued to these general store owners but no supervision of this sector has taken place.

***Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):***

476. There are no specific licensing requirements of non-prudential financial institution for supervisory purposes other than meeting the Corporations Act or Business Licence Act. The FIU has powers to conduct random audits under section 12 and 13 of the AMLA and has exercised this power in one instance.

**Guidelines – R.25 (Guidance for financial institutions other than on STRs)**

***Guidelines for Financial Institutions (c. 25.1):***

477. The FIU issued two Guidelines to all financial institutions in 2009 on CDD, record keeping, political exposed persons, and the requirement to include full originator information for wire transfers. The guideline did not explain what full originate information means but did include examples of suitable identification to be used in the CDD process. No further guidance has been issued. Information sessions have not been held nor does the FIU currently have a strategy do provide this. The new head of the FIU advised that she would be developing the FIU's strategic plan by the end of December, which will include supervision and feedback strategies.

**Table 9: Number of AML/CFT supervisory inspections and statistics of sanctions**

	2007	2008	2009	2010	2011	Total
Supervisory Inspections	0	0	0	0	1	1
Sanctions	0	0	0	0	0	0

**Analysis of effectiveness**

478. The FIU has effective powers to conduct supervision of the small financial sector in Nauru, but it has only been able to conduct one on-site inspection. This inspection tested section 12 of the AMLA as the financial institution resisted the inspection and the FIU sought and obtained a court order, which was effective. The process for the on-site inspection did not provide written notice prior to inspection explaining the purpose and intent of the visit. The lack of resources, training and conflicting priorities limit further effective supervision.

479. In discussions with the FIU, the new Supervisor is proposing to set out a supervision strategy in the FIU's business plan for 2012, which she expects to have drafted by 31 December 2011. This draft plan will also to put forward a case for further resources.

**3.10.2. Recommendations and Comments**

- Nauru should establish a 'fit and proper' regime for licensing or authorising the operation of financial institutions beyond banks.
- Nauru should consider including in the AMLA, or by regulation, other forms of sanctions for breaches of compliance to be issued by the FIU, such as giving the FIU the power to issue penalty notices where a breach of AMLA does not warrant fines or imprisonment in the first instance.
- The AMLA should be amended, or regulations issued, that provide sanctions against directors or senior managers of financial institutions.
- The FIU needs to develop policies, procedures and standard documents for its supervisory processes.
- The FIU needs to set out a supervisory strategy, including a using range of supervisory methods such as on-site, desk review and questionnaires.

**3.10.3. Compliance with Recommendations 17, 23, 25 & 29**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AMLA is not clear whether the FIU can issue administrative directions and orders</li> <li>• The FIU cannot take out measures specifically against directors or senior management</li> <li>• There is not a full range of compliance measures, such as proportionate penalty notices or a range of fines.</li> <li>• Effectiveness has not been established</li> </ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There has been minimal supervision of the financial institution to date</li> <li>• The FIU has no strategies, policies or procedures to undertake supervision of the financial sector</li> <li>• There are provision to exclude criminals controlling some financial institutions but not for alternative remittance businesses</li> <li>• There are no requirements for alternative remittance dealers to be licensed or registered</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There are no strategies, policies or procedures to develop, issue guidance or engage with the financial sector on supervision issues</li> </ul>
<b>R.29</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The AMLA is not clear whether the FIU has specific powers to sanction directors or senior management</li> </ul>

### **3.11. Money or Value Transfer Services (SR.VI)**

#### **3.11.1. Description and Analysis**

##### ***Legal Framework:***

480. MVTS in Nauru is provided only by four trading businesses. They all provide alternative remittance services. Businesses providing these services are defined in the AMLA Schedule as a financial institution at 8(b) ‘trading for own account or for account of customers in foreign exchange’ and at subsection 8(20) in ‘the conduct of alternative remittance’. Providers of MVTS are included under the provisions of AMLA which extend to supervision and monitoring by the FIU.
481. In the case of the three general stores that provide an alternative remittance service this is an adjunct to their day to day business banking to ensure cash flow. With regard to the Western Union agency, this is set up as a separate service within a hardware business. They provide cash to government departments and RONPhos (the Republic of Nauru Phosphate Mining Corporation) for payroll in exchange for electronic deposits to the company’s business trading account in Australia. These stores also provide a free service for Nauruan families in Australia wishing to remit funds to Nauru for other family members. These services are a small part of their business and exist because there are no formal banking channels on the island.

##### ***Designation of Registration or Licensing Authority (c. VI.1):***

482. There is no specific legal requirement to register with authorities as a provider of remittance services. Business registration under section 9 of the Business Licensing Act requires approval of licence conditions by the Ministry of Justice but there are no specific license conditions in that Act for those engaged in remittance or foreign exchange. There are no other laws that control alternative remittance or foreign exchange in Nauru.
483. There is no designated authority that registers these activities separate to the main business registration by the Department of Justice and Border Control for a business licence or the NAC where a corporation has been formed.

##### ***Application of FATF Recommendations (c. VI.2): (applying R.4-11, 13-15 & 21-23, & SRI-IX***

484. MVTS are subject to all the obligations in the AMLA as a financial institution. The strengths and shortcomings identified in the earlier analysis of section 3 of this report apply equally to MVTS.
485. Rec 4: Nauru does not have any bank secrecy laws that would inhibit the implementation of the FATF recommendations.
486. Rec 5: MVTS are obliged to meet the obligations of CDD when conducting occasional transactions as per the AMLA.
487. Rec 7: MVTS do not have correspondent relationships with banks.
488. Rec 10: MVTS are subject to all the required record keeping obligations in the AMLA.
489. Rec 11 and 13: MVTS are required to monitor transactions and file suspicious transactions.

490. Rec 14: The AMLA prohibits tipping off and provides safe harbour to MVTS when filing STRs.
491. Rec 21: AMLA requires MVTS to pay special attention to its business relations or financial transactions in jurisdiction not applying FATF recommendations adequately.
492. Rec 6: Politically exposed persons are captured under paragraph 27(3)(b) of the AMLA, which requires MVTS to use risk management systems to identify their status. It does not oblige a MVTS to identify beneficial owners who may be PEPs.
493. Rec 8: There is no obligation on MVTS to comply with FATF Recommendation 8.
494. Rec 9: The MVTS providers in Nauru do not use third parties; therefore this element does not currently apply.
495. Rec 15 AMLA requires MVTS to appoint a compliance officer who shall be responsible for ensuring the financial institution's compliance with the requirements with the AMLA. MVTS are required to have an audit system to test their AML/CTF systems; however, the AMLA does not state that these must be independent.
496. Rec 22: At the time of the onsite visit, there are no MVTS in Nauru that had overseas branches or subsidiaries.

***Monitoring of Value Transfer Service Operators (c. VI.3):***

497. The FIU has been designated the MVTS supervisor under the AMLA. The FIU is in the initial stages of planning its supervision strategies. To date only the Western Union agent has been visited. None of the other MVTS have been inspected or asked to provide information on their AML/CTF programs.

***List of Agents (c. VI.4):***

498. There are no provisions in the AMLA for the supply of agent's names or their business details to competent authorities. From the onsite assessor's assessment and observation the MVTS in Nauru are only stand-alone businesses with no agents.

***Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):***

499. The sanctions available under sections 17 and 35 of the AMLA apply to MVTS, as discussed in section 3.10 of this report. The range of sanctions is limited to AUD40,000-50,000 fines and 10-15 years imprisonment for individuals or AUD400,000-500,000 for a body corporate. In some instance the fines or imprisonment sentence appears severe for lesser breaches of the AMLA. There is an absence of a range of sanctions proportionate to the severity of non-compliance.

**Analysis of effectiveness**

500. Nauru includes MVTS as financial institutions in the AMLA and subjects them to the same legal obligations. As there are no banks on the island, MVTS provide a substitute service in making arrangements for funds to be accredited to offshore trading accounts. With the notable exception of Western Union, the informal MVTS have yet to implement any of implementation the AMLA requirements.

501. To date there has been no effective supervision of this sector and the sector is largely unaware of its AMLA obligations. Of the two small MVTS the assessors spoke with, none were collecting CDD per the requirements of the AMLA. In the case of one business, remittance was only conducted with other legal persons for cash flow purposes and for their own staff as an employee service. The other MVTS advised that while they do not keep CDD records they only conduct outbound transfers for persons known to the business in Nauru, while deposits into their Australia bank accounts were accepted from their Nauruan families living in Australia.

502. The FIU has provided limited guidance in the form of two guidelines published in 2009 but no follow up activities. There is no formal mechanism to register MVTS, or their agents, although the size of the island population means that effectively Nauruan operated businesses providing an MVTS are known to competent authorities. The authorities did not know if any of the Chinese run businesses were providing a similar service for the small Chinese community.

### **3.11.2. Recommendations and Comments**

- The FIU needs to conduct outreach to the MVTS to educate them about their obligations
- The FIU needs to consider a simple mechanism to register the MVTS providers.
- The FIU needs to commence supervision of this sector.

### **3.11.3. Compliance with Special Recommendation VI**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No legal obligations to register MVTS (or their agents)</li> <li>• No monitoring, education or follow up action by the FIU to ensure the MVTS are complying with their AMLA obligations.</li> <li>• There is an absence of a range of sanctions proportionate to the severity of non-compliance.</li> <li>• Gaps that apply to recommendations 6, 8, 9, 10, 11, 15, 17, 21 and 22 also apply.</li> <li>• No requirement to keep a list of MVTS agents</li> </ul>

#### **4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

##### *General Description*

503. The DNFBP sector in Nauru comprises of only of the two company service and trust service providers. The corporation service provider is the Nauru Agency Corporation (NAC). This is wholly owned by the Government of Nauru. The NAC provides corporation registration and corporation secretarial services. NAC can arrange corporation directors through other government trusts. At the time of the visit there were 59 foreign companies registered in Nauru with the NAC.
504. Trust services are provided by the Nauru Trust Corporation (NTC), which is wholly government owned co-located with the NAC. The NTC currently has 23 trusts registered on its books. Offshore trusts operating in Nauru are regulated under the Corporations Act, which provides for the creation of registered trustee corporations which may issue debentures to the public and must obtain a license from the government through the NTC. All trusts are required to form a holding company through the NAC. There are 11 trust company licenses issued in Nauru. All are formed on behalf of foreigners.
505. There are no real estate agencies in Nauru. Land ownership is determined through custom. The President of Nauru must approve any lease or transfer of land. Non-Nauruan are unable to own land under local laws. Land is regulated by the *Lands Act 1976* for which the competent authority is the Nauru Lands Committee, a statutory body established under the *Nauru Lands Committee Act 1956*.
506. Nauru's legal profession is very small and is regulated by the *Legal Practitioners Act 1973* for which the Courts of Nauru have jurisdiction. At the time of the onsite visit there were six lawyers and one pleader working for the government, a resident Magistrate who is also a lawyer and one lawyer and five pleaders in the private sector. A pleader has a certificate in legal studies and appears on behalf of a defendant, plaintiff or appellant in court. Opportunities for private business are very limited, given that there is no commercial bank or other financial institutions (apart from Western Union). The majority of civil matters are land cases. *The Barristers and Solicitors (Accounts) Rules 1973* regulate accounts and other relevant financial activities undertaken by barristers and solicitors.
507. There are no businesses selling precious metals or stones and no jewellery stores in Nauru.
508. There are no casinos on the island although there is one slot machine venue with 58 slot machines. These machines provide low value games with only one machine able to accept more than AUD50. The maximum payout has been AUD1000. Three illegal wagering houses have opened recently where bets can be placed on Australian races prior to the race being broadcast on the radio. The only other form of gambling is bingo where the maximum payout has been AUD25,000. Bingo was regulated by the Department of Justice and Border Control at the time of the on-site visit but has now changed to the Department of Finance with the introduction of the *Gaming Act 2011* in December 2011, The Department of Finance issues a licence for each game and that a person applying for a licence must also submit a police clearance.
509. The DNFBP sector generally has low ML and TF vulnerabilities because it is limited in scope. The main vulnerability for ML rests with the corporation and trust service providers.

## **4.1. Customer Due Diligence and Record-keeping (R.12)**

### **4.1.1. Description and Analysis**

#### ***Legal Framework:***

510. The Schedule of the AMLA defines financial institutions that are usually considered non-financial businesses and professions (DNFBP) as:

- real estate in relation to buying and selling of real estate;
- casinos and lotteries;
- dealing in art, antiques, precious metals and stones;
- trust or company service providers;
- legal practitioners and accountants when preparing or carrying out transactions that relate to managing clients' money, securities and other assets and making legal arrangements for the buying and selling of business arrangements;
- collecting and remitting cash as part of pay roll services; and
- the conduct of alternative remittance.

511. All DNFBP listed above as financial institutions in the AMLA Schedule are required to implement CDD, record keeping and pay special attention to politically exposed persons as are all other financial institutions. There are no requirements for DNFBP to take into account non-face-to-face neither transactions nor the emergence of new technologies as required by Recommendation 8.

#### ***CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1):***

512. Rec 5: The corporation service and trust service providers are required in the AMLA to undertake CDD when registering a business or trust. Persons wishing to establish a trust are required to register a holding company before the trust is itself registered and therefore go through the CDD process at that point. The CDD requirements of establishing a company are reasonably thorough and require a certified copy of passport, utility bill and police clearance; a business plan for the company must also be submitted and proof of financial liquidity.

513. Corporation and trust registration cannot be anonymous nor can fictitious names be used. Section 103 of the Corporations Act requires a company to have at least two directors and supply documentation such as the articles of incorporation and any other stipulated by the Registrar per section 15 of that Act. A Certificate of Compliance must also be submitted with all applications. During the processing of applications the Registrar conducts checks through 'World Check', an international database that can identify known criminals or politically exposed persons.

514. The FIU and Corporation Registrar (the NAC supervisor) have access to all NAC and NTC documentation upon request.

515. Beneficial ownership is not explicitly required under the AMLA and therefore there is no obligation for DNFBP to confirm beneficial ownership. In practice the trust and company service providers said that they check beneficial ownership but have no policies or procedures recorded and were unable to explain how far in a chain of ownership they were prepared to check.

***CDD Measures for DNFBPs in Set Circumstances (Applying R. 6 & 8-11 to DNFBP) (c.12.2):***

516. Rec 6: Corporation and trust service providers are required to pay special attentions to PEPs as are other financial institutions listed in the AMLA Schedule. In practice the NAC relies on the Companies Registrar to assist NAC to screen all new applications for PEPs using World Check and recording their findings. As the NAC and NTC do not have any written processes or policies, it was not clear what next steps they would take in a CDD process if they found a PEP, or a spouse or relative of a PEP, in their checking the World Check database.
517. Rec 8: There are no provisions in the AMLA for compliance with Recommendation 8 for non-face to face transactions or new emerging technologies.
518. Rec 9: The provisions of section 29 of the AMLA that apply to the use of third parties also apply to DNFBP in Nauru. In practice, the company and trust providers do not use agents in providing their services.
519. Rec 10: Record keeping requirements per section 35 of the AMLA apply to all DNFBP. In practice the company and trust providers are maintaining records for more than 10 years and these are available to the FIU upon request. The FIU has power under section 12 of the AMLA to request any financial documentation to carry out its functions. The requirement for DNFBP to keep records of business correspondence is missing from the legal framework.
520. Rec 11: The AMLA's requirements (section 36) for monitoring large, unusual, or complex transactions equally apply to DNFBP in Nauru. In practice the company and trust providers examine complex structures during the application process, although they have no written documented procedures. There are no provisions in the AMLA for DNFBPs to take counter-measures where countries insufficiently apply FATF recommendations.

**Effectiveness**

521. Discussions with the NAC and NTC indicated that all their transactions are non-face to face with documentation to register a corporation or trust conducted via email, courier and post. In practice the NAC and NTC carry out CDD per the requirements of the Corporations Act and AMLA and include measures to counter the risks of non-face to face registration. The NAC and NTC obtain hard copies of passports, utility bills and criminal clearances, which are kept on file and available to the FIU upon request. This also includes business correspondence, annual returns and other information. The assessors were advised that the NAC has rejected applications where proof of identification has been questionable; however, the NAC was unable to demonstrate that it has a system or procedures to validate documents that are submitted.
522. In practice record keeping is being adhered to by NAC and NTC. Each agency retains paper records for more than five years. Both agencies stated that their information on incorporated companies and trusts established in Nauru was available to the FIU if requested at any time. This was verified by the FIU.

#### 4.1.2. Recommendations and Comments

523. As DNFBP are listed in the AMLA as financial institutions, rectification of the missing requirements listed under Recommendations 5, 6, 8, 9, 10 and 11 will ensure compliance with Recommendation 12.

- Ensure that the NAC and NTC prioritise implementation of AML/CFT controls for the offshore sector.

#### 4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"><li>• Checking of beneficial ownership is not included in the AMLA for DNFBP</li><li>• Enhanced CDD for high risk customers not present</li><li>• Obligation to identify PEPs doesn't extend to beneficial owners</li><li>• There is no requirements in the legal framework to pay special attentions to non-face to face transactions or emerging technologies</li><li>• The requirement to keep records of business correspondence is not fully covered.</li><li>• There are no provisions to take counter-measures where countries insufficiently apply FATF recommendations</li></ul>

#### 4.2. Monitoring Transactions and other Issues (R.16)

(Applying R.13 to 15 & 21)

##### 4.2.1 Description and Analysis

*STR reporting for DNFBPs (16.1 – applying Rec 13):*

524. All DNFBP in Nauru are required under section 17 of the AMLA to file an STR if they form a suspicion that ML or TF is linked to a transaction they are processing or assisting in processing. In the case of trust and company service providers this would occur during trust registration and company incorporations, at annual returns or changes to directors, share ownership, and any other changes notified or arrangements that they are directed to do as they act as the company secretary.

525. Not all predicate offences listed by FATF are covered in Nauruan law. For further details on the requirements to file STRs under the AMLA refer to section 3.7 in this report.

526. No DNFBP has filed an STR with the FIU since they received Guidance 1 on STR obligations in 2009. The company and trust service providers have not actively monitored their dealings with company/trust applications/renewals in terms of suspicious transaction reporting.

527. Tax avoidance is not an unlawful activity as defined by the AMLA and therefore the NAC and NTC are not obliged to lodge STRs on tax matters. This may be a significant vulnerability, as there are common typologies involved with the use of offshore corporate vehicles to avoid tax in foreign jurisdictions.

***Cooperation between SROs & the FIU in cases lawyers, notaries, etc report STRs to their SRO (16.2):***

528. Although the legal profession is captured by the AMLA and have AML/CTF obligation were they to provide company or financial management services, the only private lawyer operating in Nauru does not provide these services. The Chief Justice of Nauru has the powers to discipline the legal profession but has not needed to do so to date.

***Tipping off, safe harbour, internal controls (16.3 – applying r.14, 15 & 21):***

529. The tipping off provisions per section 21 of AMLA applies to DNFBP and is enforceable. The AMLA provisions are compliant with the FATF recommendations. Refer to section 3.7 in this report for details on tipping off provisions.

530. DNFBP are also subject to section 24 of AMLA that requires financial institutions to appoint compliance officers and develop internal systems and procedures to control money laundering. The AMLA does include the requirement for auditing of AML/CTF programs but not that they need to be independent; refer to section 3.8 in this report for further discussion on auditing requirements of the AMLA.

531. Paragraph 36(2)(a) of the AMLA requires all financial institutions to pay attention to transactions or business relationships with person in jurisdictions that do not have adequate systems to deter money laundering. The AMLA does not, however, require counter measures for countries with weak AML/CTF regimes and do not apply FATF standards. The FIU has not provided guidance to DNFBPs as to which countries have weak AML/CTF regimes.

***Additional Element – extension of the STR requirement extended to auditing by accountants (16.4):***

532. There are no independent accountants in Nauru and therefore this criterion does not apply.

***Statistics and effectiveness***

533. There are no statistics available as evidence of effectiveness in meeting Recommendation 16. Both the NAC and NTC have obligations to lodge STRs per section 17 but to date have not done so. While there is a CDD process on application for establishing a trust or incorporation, there does not appear to be any focus on further due diligence if on the face of it there are doubts that documentation would meet all requirements.

534. There are only a few staff at the office of the NAC and NTC with the senior officers taking on the role of AML/CFT compliance officers. No separate independent audit function was noted during the onsite visit but the Corporations Registrar was exercising supervisory powers and could act as an independent auditor. The corporation service providers did state that they check FATF websites for countries listed with ineffective AML/CTF regimes but were unable to describe their processes above their normal checks if an application for incorporation was lodged from such a country.

535. The lack of coverage of tax offences as predicates may undermine effective STR reporting by the TCSPs in Nauru. Nauru may be vulnerable to misuse of corporate vehicles to launder the proceeds of foreign tax offences.

#### 4.2.2. Recommendations and Comments

- Ensure that the NAC and NTC prioritise implementation of AML/CFT controls for the offshore sector and encourage STRs to be filed.
- The recommendations made against Recommendations 13, 15 and 21 apply equally to DNFBPs and will address weaknesses in Recommendation 16.

#### 4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
<b>R.16</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The full range of predicate offences are not covered for STRs</li> <li>• Restrictive provisions regarding tax offences may undermine the operation of the STR reporting regime.</li> <li>• FIU yet to conduct education and awareness sessions for the DNFBP sectors</li> <li>• The AMLA does not mention the requirement of independent audit provisions and compliance officers are not required to be at management level.</li> <li>• No clear obligation for employee training to be ongoing</li> <li>• There are no legal requirements to apply counter measures for countries with weak AML/CTF regimes and do not apply FATF standards.</li> </ul>

### 4.3. Regulation, Supervision, and Monitoring (R.24-25)

#### 4.3.1. Description and Analysis

#### RECOMMENDATION 24 (Supervision of DNFBPs)

##### Legal Framework:

536. Supervision of the DNFBP sector fall to the FIU per section 8 of the AMLA. Sanctions as listed in the AMLA for financial institutions also cover DNFBP. Sanctions are in the form of fines and imprisonment for individuals and fines for corporations, for either non-compliance with the AMLA or obstructing FIU investigations, and are stipulated in the AMLA at relevant sections. The enforcement provisions are dissuasive but in some instances excessive. Most carry 10 year imprisonments and fines of AUD50,000 for individuals and AUD500,000 for body corporate. In the case of a DNFBP failing to lodge an STR, for example, an individual can face 10 years imprisonment and a AUD50,000 fine (subsection 17(4)). Refer to section 3.10 for a fuller discussion of sanctions.

***Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):***

537. Although casinos are covered under the AMLA as a financial institution, there are no Casinos, either as a physical entity or as an internet based casino, in Nauru. There are no other laws that regulate casinos. The FIU is responsible for AML/CTF supervision of casinos if one should exist.

***Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):***

538. NAC is supervised by the Company Registrar for compliance with the Corporations Act Foreign, and the FIU for AML/CTF obligations. The head of the FIU is also the Registrar of Corporations. The Registrar has been actively supervising the trust and company service providers for quality of work, but not specifically for their AML/CTF obligations. The Registrar of Corporations does supervise the NAC's role in issuing trustee licenses under the Corporations Act.

539. The legal profession is very small and not engaged in business activities which come under AML/CTF standards.

**RECOMMENDATION 25 (Guidance for the DNFBP sectors)**

***Guidelines for DNFBPs (applying c. 25.1):***

540. The FIU has issued guidelines on STRs, CDD, record keeping and monitoring unusual transactions to the trust and company service providers in 2009. No further follow up or education of the sector has been undertaken. No further guidelines have been issued or guidance developed.

***Effectiveness***

541. AML/CFT supervision of DNFBPs is the responsibility of the FIU. In practice the FIU Supervisor also holds the position of the Registrar of Corporations in Nauru and has oversight of the company service provider under both functions. The interaction between the Registrar and the company service provider in both roles has improved the compliance levels with identification processes.

542. No supervision of the TCSP responsible for trusts (NTC) has taken place. The Registrar of Corporations does supervise the NAC's role in issuing trustee licenses under the Corporations Act. This does not yet extend to the annual returns of trustee corporations.

543. Deepening of AML/CFT culture in the NAC and NTC is needed. The foreign offshore companies and trusts represent a residual risk that Nauruan legal persons or arrangements could be used for laundering the proceeds of foreign offences.

544. Effectiveness of supervision may be undermined due to the legal impediment of the FIU to exchange information with foreign supervisors if findings relate to tax matters in a foreign jurisdiction.

### 4.3.2. Recommendations and Comments

- The FIU needs to bring AML/CTF obligations to the attention of the DNFBP in Nauru.
- The FIU should commence AML/CTF compliance monitoring of the company and trust service providers (NAC and NTC) as a priority.
- Until other DNFBPs are active in Nauru, resources should remain focused on the offshore sector entities.

### 4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
<b>R.24</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited AML/CTF supervision has occurred for the company service provider, but none for the trust service provider</li> <li>• The FIU has no strategies, policies or procedures to undertake supervision of the DNFBP</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Only one guideline has been issued but no further action since 2009</li> <li>• There are no strategies, policies or procedures to develop, issue guidance or engage with the DNFBPs</li> </ul>

## 4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

### *Legal Framework:*

545. The Schedule to the AMLA defines financial institutions that must comply with the Act. These include some entities that are regarded as being at risk for ML or TF other than those normally prescribed as a DNFBP, such as bingo licence holders. All entity types defined a financial institution in the AMLA are subject to the full range of AML/CTF preventative measures of the Act.

546. AMLA requirements are extended to lottery activities. Lotteries, such as bingo, are prevalent in Nauru. AMLA requirements have also been extended to dealing in art and antiques in relation to their dealings in cash transaction above a prescribed threshold. These businesses are not yet active in Nauru.

### 4.4.1. Description and Analysis

### *Legal Framework:*

#### *Other Vulnerable Non-financial businesses (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):*

547. The AMLA covers dealers in art and antiques in addition to lotteries. There are no businesses dealing in either art or antiques.

548. There is one slot machine venue that is licensed as a business but is not listed in the AMLA as a financial institution. There were three illegal wagering venues operating at the time of the onsite visit but these are also not covered as a financial institution in the AMLA's Schedule. The provision of bingo is covered as a financial institution in the AMLA Schedule (as a lottery). A person seeking to hold a bingo game was required to obtain a licence from the Department of Justice and Border Control at the time of the onsite visit. This responsibility has now passed to the Department of Finance with the enactment of the *Gaming Act 2011*. At the time of the on-site visit there had been no AML/CTF supervision. Licences are issued each time a person seeks to hold a game and are for one-off events only. A person must supply identification and a police clearance to obtain a bingo licence.

549. There is no application of the recommendations listed in 20.1 to the other forms of gambling that are occurring in Nauru at the time of the onsite visit. The assessors did not find any evidence of the other non-financial businesses or professions that should be subject to AML/CTF measures.

***Modernization of Conduct of Financial Transactions (c. 20.2):***

550. The Nauru government is taking steps to move away from a solely cash based economy.

551. The Department of Finance is currently piloting an electronic payment system for all governmental financial based transaction request i.e. payment voucher. The Nauru Government agreed in principal to Digicel (mobile phone service provider) providing mobile money services, however, this proposal is still in its early stages of research and development. The proposed role of Digicel would be to act as a conduit for an established banking institution most likely in Australia; however, this is yet to be confirmed.

**4.4.2 Recommendations and Comments**

- Continue with negotiations to establish banking in Nauru.

**4.4.3 Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>C</b>	Fully observed.

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**

### **5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)**

#### **5.1.1. Description and Analysis**

552. There is now only a relatively small offshore corporations registry operating in Nauru. At the time of the onsite visit only 59 offshore corporations are registered under Nauru law. A number of these are holding corporations for the Nauru government owned corporations. Twenty-two corporations have been formed in Nauru since 2005. Of those, eight have been struck off and three are pending for striking off. Only 10 of those remain in good standing.

#### ***Legal Framework:***

553. Incorporation of legal persons is governed by the *Corporations Act 1972*. Every corporation must have one or more secretaries, one of whom must be a resident secretary appointed by the responsible Minister. The resident secretary is responsible for compliance by the corporation with the requirements of the Corporations Act, maintenance of the corporation's records at the registered office, opening of the registered office to the public, and dealing with communications addressed to the corporation at its registered office (section 110). All corporations must have a registered office in Nauru (section 101).

554. The Corporations Act provides that corporations may apply for a licence to establish a trust and insurance company in accordance with that Acts provisions and the *Insurance Act 1974*, although the Insurance Act has since been repealed via the *Statute Law Revision Act 2011*. Grant of a trustee licence is contingent on adherence to the relevant laws of Nauru including the AML/CFT laws.

555. The Registrar of Corporations is responsible for the company registration process, keeping of the registry and other functions prescribed under the Corporations Act.

556. Nauru has a system of central registration of companies. There is only one authorized company service provider, the Nauru Agency Corporation (NAC). All the information required by the Corporations Registry is provided by NAC on behalf of the corporations. FIU can have access to the records of the Corporation Registry and NAC pursuant to section 8 AMLA.

#### ***Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):***

557. Applicants for registration are required to provide the name and address of directors and shareholders. However, company directors and shareholders are not required to provide further information of its beneficial ownership. Nominee or trustee directors are not required to be disclosed.

558. Section 111 of the Corporations Act requires the corporation to keep at its registered office a register of its directors, registered directors and secretaries, and for individuals, current and former names and usual address; for a corporation it must keep a record of its corporate name and the address of its registered office. The register shall be open to the inspection of any director, member and auditor of the corporation without charge. Within one month of any changes to directors or secretaries, the company must notify the Registrar of the change.

559. Section 126 requires corporations to keep a register and index of members and their shareholdings at their registered office in Nauru. This does not apply to any bearer shares issued by it. The register is to include the name and address of members and the amount paid or agreed to be considered as paid on the shares of each member. The date at which the name of each person was entered in the register as a member and the date at which any person who ceased to be a member during the previous seven years so ceased to be a member.

560. Foreign corporations which incorporate in Nauru are required to hold the same details as mentioned above in their Nauru office, including the particulars of shareholders, directors and secretaries as outlined above.

561. There is a requirement under the Corporations Act for yearly renewal of incorporation, including identifying shareholders and directors, which are verified by the Registrar. This information is limited to formal ownership, rather than the identification of beneficial ownership. There is no requirement for a Nauru corporation to file accounts with the Registrar.

***Access to Information on Beneficial Owners of Legal Persons (c. 33.2):***

562. There is very little information on beneficial owners of legal persons kept by the one TCSP (NAC) or the Corporations Registrar. The data available with the Registrar is limited to formal ownership and this information is available to the FIU and law enforcement as needed. However, its value to law enforcement is undermined by the absence of beneficial ownership information.

***Prevention of Misuse of Bearer Shares (c. 33.3):***

563. Bearer shares and bearer warrants may be issued pursuant to section 46 of the Corporations Act. This may be done by both the resident secretary (NAC) and non-resident secretaries outside of Nauru. The NAC, in its role as resident secretary for all Nauru corporations, argues that annual requirements for company secretaries to reconcile share holdings at the time the yearly return goes some way to preventing misuse of bearer shares. The assessment team concluded that in practice, non-resident secretaries are able to issue bearer shares and would not be required to record in share registries the identity of those holding bearer shares. But the Corporations Registry does not keep any information of the beneficial owners of these shares.

564. The assessment team discussed the use of bearer shares with NAC management. In the last five years no bearer shares have been presented to the NAC in its role as resident secretary of all Nauru corporations.

***5.1.2 Recommendations and Comments***

565. The assessment team notes that the FIU Supervisor is also the Registrar of Corporations, which is positive for overseeing the registration and record keeping process of the one TCSP.

- The Corporations Registry should require information on beneficial ownership from the companies for registration, which should be readily available to competent authorities.
- Nauru should explicitly forbid the issuance of bearer shares under the Corporations Act or any other law or should require registration of beneficial ownership of bearer shares.

### 5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"><li>• The information kept by the Company Registry does not extend to beneficial ownership information.</li><li>• Bearer shares and bearer share warrants are able to be issued for Nauru corporations without beneficial ownership being recorded.</li></ul>

## 5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1 Description and Analysis

566. Eleven foreign trustee company licenses were in operation in Nauru at the time of the onsite visit, with a total of 14 unit trusts issued under the 11 licenses. All are formed on behalf of foreigners. No new trustee company licenses have been issued within the last 10 years.

#### **Legal Framework:**

567. Laws governing the formation and operation of trusts in Nauru are based on the trust laws of England, except as modified in the *Foreign Trusts, Estates and Wills Act 1972*. Those modifications include that trusts are not required to be registered under Nauruan laws.

568. The *Nauru Trustee Corporation Act 1972* establishes the Nauru Trustee Corporation (NTC) with functions to act as trustee for all types of trust, including purpose trusts under the Foreign Trusts, Estates and Wills Act.

569. Offshore trusts operating in Nauru are regulated under section 73 of the Corporations Act, which provides for the creation of registered trustee corporations which may issues debentures to the public. Section 74 governs the contents of trust deeds. Trustee corporations established under section 73 must obtain a license from the government through the NTC. The application for license must set out the number of unit trusts to be issued under each license.

570. Each trust company must file an annual return, which sets out the number of unit trusts in operation, the unit trust management and the formal beneficiary of the trust. Information on the settlors is not included. There is no requirement to lodge the ultimate beneficial owner of the unit trust.

#### **Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):**

571. Eleven foreign trustee company licenses are in operation in Nauru, with a total of 14 unit trusts issued under the 11 licenses. All are formed on behalf of foreigners. No new trustee company licenses have been issued within the last 10 years.

***Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):***

572. Each trust company must file an annual return which sets out the number of unit trusts in operation, the unit trust management, and the formal beneficiary of the trust. Information on the settlors is not included. There is no requirement to lodge the ultimate beneficial owner of the unit trust.

573. The data available with the NTC is limited to formal ownership and this information is available to the FIU and law enforcement as needed. Its value to law enforcement is undermined by the absence of beneficial ownership information.

***5.2.2. Recommendations and Comments***

- The Nauru Trustee Corporation should require information on beneficial ownership from unit trusts to be readily available to competent authorities in Nauru.

***5.2.3. Compliance with Recommendations 34***

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.34</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• There is no mechanism to collect beneficial ownership information in trusts</li><li>• While beneficiaries of unit trusts issued in the offshore sector are recorded, the information does not extend to beneficial ownership or the identity of settlors</li></ul>

### **5.3. Non-Profit Organisations (SR.VIII)**

#### **5.3.1. Description and Analysis**

##### ***Legal Framework:***

574. There is no legal framework for the incorporation of non-profit organisations in Nauru. There are currently no laws or policies relating to the NPO sector in Nauru, nor is there any supervision of NPOs. Nauru advised that relevant legislation is on the legislative agenda.

575. The absence of any legal framework is a significant problem for the operation of civil society organisations.

576. The APG assessment team met with representatives of the NPO sector and there is a strong interest from within the sector to pass laws to ensure that NPOs are supported by requirements for registration, transparency and good governance.

577. None of the elements of SRVIII have been implemented in Nauru.

#### **5.3.2. Recommendations and Comments**

- Nauru should review models for a suitable legal and regulatory framework which suits the conditions of a small island jurisdiction and the needs of the NPO sector in Nauru. This should include requirements for registration, transparency, maintenance of records, and sanctions for violations of oversight rules.
- Nauru should consider how to conduct appropriate outreach to the NPO sector to protect it from abuse for TF.
- Nauru's future approach to supervision or monitoring should focus on those NPOs that account for significant share of the sector's resources or international activities.
- Nauru should ensure measures to support effective investigation and gathering of information on NPOs, including through domestic and international coordination.

#### **5.3.3. Compliance with Special Recommendation VIII**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VIII</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• There is no legal framework to support the formation or operation of NPOs in Nauru.</li><li>• No aspect of SRVIII has yet been implemented in Nauru.</li></ul>

## **6. NATIONAL AND INTERNATIONAL CO-OPERATION**

### **6.1. National Co-Operation and Coordination (R.31)**

#### **6.1.1 Description and Analysis**

##### ***Legal Framework:***

578. Nauru's AML/CFT national cooperation and coordination is based on policy and practice rather than statutory provision.

##### ***Mechanisms for Domestic Cooperation and Coordination in AML/CFT Matters (c. 31.1):***

579. Cabinet established the National Coordinating Committee (NCC) in August 2004. Its Terms of Reference (TOR) were last updated in November 2004. The NCC is an inter-agency grouping, tasked to deal with AML/CFT issues at a policy and high-level implementation level.

580. The Minister for Justice and Border Control is the Chair of the NCC. Other members of the NCC are the Secretary for Justice, the Secretary for Finance, the Secretary for Foreign Affairs and the Commissioner of Police.

581. The NCC's main policy objectives are to:

- Develop national policy on measures to counter ML, TF, transnational crime, and illicit trade in small arms, light weapons and weapons of mass destruction and related matters;
- Co-ordinate national policies with regional and international initiatives; and
- Agree upon an action plan for the countering of ML and TF in Nauru.

582. Although the NCC's TOR provides for regular meetings, in practice the NCC does not meet on a regular basis. Minutes and records of meetings are not usually kept.

583. There are no formal procedures for policy development or consultation. It is often difficult to understand the rationale for Cabinet decisions as no minutes of Cabinet meetings are being kept. Cabinet submissions may originate from department heads or the relevant minister. There are plans for the development of a Cabinet handbook. In practice, AML/CFT policy formulation and coordination usually originates from the Secretary for Justice and Border Control. Policy proposals may be discussed by the NCC and/or Cabinet, which must give final approval.

584. By virtue of the fact that the FIU Supervisor has the dual functions of both FIU and AML/CFT supervisor and retains the role of Registrar of Corporations, there is no issue with cooperation on these functions.

585. Informal cooperation and coordination takes place at an agency-to-agency level. Although the AMLA provides for the FIU to enter into any agreement or arrangement with any domestic law enforcement agency, government institution or supervisory authority regarding the exchange and sharing of information (subsection 8(n) of AMLA), there are no formal mechanisms or policies for domestic cooperation between the FIU and other agencies in place.

586. There are no laws or procedures that formally enable or prevent other government agencies exchanging AML/CFT related information with each other, or co-operating in AML/CFT matters. In practice, the Office of Director of Public Prosecutions (ODPP) is available to the Nauru Police Force (NPF) for legal advice and interpretation of relevant AML/CFT legislation. No explicit concerns were expressed by any agencies about the absence of formal instruments of cooperation such as Memorandum of Understanding (MoU).

587. The absence of MoUs between agencies currently does not appear to be a major impediment to the investigation and prosecution of ML/TF matters. Cooperation and consultation between agencies is presently undertaken on a limited and ad hoc basis, if and when the requirement arises.

588. There is a general lack of information/intelligence sharing capability amongst LEAs and a lack of effective protocols across all relevant Government Departments.

***Additional Element - Mechanisms for Consultation with Regulated Institutions (c. 31.2):***

589. Under the AMLA, the FIU is the supervisor for all regulated financial institutions. As the FIU is in its infancy it has not yet engaged in any consultations with its regulated entities.

***Effectiveness***

590. Nauru is a small jurisdiction and meetings between the key agencies can normally be arranged as needed. Information is being shared informally. No statistics are available in relation to domestic cooperation between AML/CFT agencies.

***6.1.2. Recommendations and Comments***

- Include all relevant agencies in AML/CFT coordination meetings
- Establish formal agreements (MoUs or the like) between Nauru’s key AML/CFT agencies to give structure to and further encourage information sharing.
- Consider keeping formal minutes of meetings and records of actions arising from both policy and operational meetings.

***6.1.3. Compliance with Recommendation 31***

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There are no formal arrangements for the exchange and sharing of information in place.</li> </ul>

## 6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1. Description and Analysis

#### *Legal Framework:*

591. Nauru is a signatory to 16 counter terrorism conventions, including the UN Convention for the Suppression of the Financing of Terrorism. Nauru has signed but not ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention). Nauru is not a party to United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) and United Nations Convention Against Corruption. See Section 1 of this report for a discussion of the recognition of treaties in domestic law in Nauru.

#### *Ratification of AML Related UN Conventions (c. 35.1) :*

592. Nauru signed the Palermo Convention in 2001. It is currently going through the ratification procedure and is expected to have it ratified soon<sup>20</sup>. Nauru has not become a party to the Vienna Convention.

#### *Ratification of CFT Related UN Conventions (c. 1.1, ):*

593. Nauru has signed and ratified the United Nations International Convention for the Suppression of the Financing of Terrorism (TF Convention).

#### *Implementation of UN SCRs relating to Prevention and Suppression of FT (c. 1.2)*

594. The legal provisions for the implementation of the UNSCRs are contained mainly in CTTOC. AMLA also contains some relevant provisions in relation to terrorist property in general. Detailed analysis of the implementation of the UNSCRs is set out in section 2.4 of this report.

### 6.2.2. Recommendations and Comments

- Nauru should take immediate action to become party to the Palermo and Vienna Conventions within the shortest possible timeframe.
- Establish a mechanism for giving effect to UNSC 1267 and UNSCR 1373 obligations to freeze property without delay.

### 6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.35</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Vienna and Palermo conventions not ratified and not fully implemented</li></ul>
<b>SR.I</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Nauru is a party to the TF Convention; however there are gaps with its implementation.</li></ul>

<sup>20</sup> In June 2012 Nauru lodged instruments of ratification with the United Nations to become a party to the Palermo Convention and its three protocols. No reservations were lodged.

- |  |  |   |
|--|--|---|
|  |  | • The UNSCRs have not been implemented in Nauru |
|--|--|---|

### **6.3. Mutual Legal Assistance (R.36-38, SR.V)**

#### **6.3.1. Description and Analysis**

##### ***Legal Framework:***

595. The *Mutual Assistance in Criminal Matters Act 1974* (MACMA) together with *Proceeds of Crime Act 2004* (POCA), *Anti-Money Laundering Act 2008* (AMLA) and *Counter Terrorism and Transnational Organised Crime Act 2004* (CTTOC) contain provisions for mutual legal assistance (MLA) in criminal matters. Although there are various options to obtain and provide MLA, the provisions under these four statutes are very different and are quite complicated. Since Nauru has never made or received requests in relation to MLA, it is unclear which statute Nauru would rely on.

596. MACMA is the primary statute for mutual legal assistance. Under Part 3, the Minister for Justice and Border Control may authorise a Magistrate to take evidence from a witness and order the production of documents (same meaning as POCA) or articles (not defined). Under Part 4, the same Minister may direct an authorised officer to apply to a judge for a search warrant, but the Minister has not designated any authorised officer yet. In relation to proceeds of crime, Part 7 provides for the enforcement of foreign forfeiture and pecuniary orders; search warrants, restraining orders or information gathering orders may also be obtained. Sections 30 and 31 provide for the transfer of a prisoner in Nauru to give evidence in foreign countries.

#### **RECOMMENDATION 36**

##### ***Widest Possible Range of Mutual Assistance (c. 36.1 & SRV):***

597. Under section 7 of MACMA, a foreign country may make a request for international assistance in a criminal matter to the Minister of Justice and Border Control. A “criminal matter” is defined to mean offences for which the penalty is imprisonment for a term of not less than 12 months, had the conduct occurred in Nauru. MACMA provides a wide range of mutual assistance except for the service of judicial documents.

598. Part 8 of AMLA provides for MLA in relation to ML. The range of assistance includes monitoring orders, production orders, search and seizure of tainted property, location or seizure of documents and freezing and forfeiture of property.

599. Part 3 of POCA contains provisions for MLA in relation to foreign serious offences which is defined to mean offences with a penalty of imprisonment for not less than 12 months, had the conduct occurred in Nauru. Sections 42 to 47 provides for the assistance in search and seizure of tainted property. Sections 59 to 69 provide for assistance in interim restraining orders. Sections 70 to 77 provide for assistance in relation to foreign restraining orders including registered restraining orders under MACMA. Section 25 provides for the enforcement of foreign forfeiture orders registered under MACMA.

600. MACMA and Part 3 POCA apply to TF by definition of “criminal matter” and “foreign serious offences” respectively. In addition, section 79 of the CTTOC clarifies that despite anything in the MACMA, terrorist acts under the CTTOC are taken, for the purpose of extradition or mutual

assistance, not to be a political offence of a fiscal offence. Additionally, subsection 79(2) reiterates that no requests for MLA in relation to an offence under the CTTOC may be declined solely on the basis of bank secrecy.

601. The four statutes together provide a wide range of MLA except in relation to the service of legal documents and facilitating the voluntary appearance of persons (not prisoners). It is unclear whether such assistance may be provided nevertheless.

***Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):***

602. No request for assistance has ever been received by Nauru. There is nothing procedurally in the MACMA that would appear to limit timely and constructive provision of assistance.

***No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):***

603. Under section 9 of MACMA, the Minister for Justice and Border Control may, in respect of any request from a foreign country:

(a) refuse a request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of Nauru; or

(b) postpone a request, in whole or in part, after consulting with the foreign authority, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Nauru.

604. Under section 8 of MACMA, assistance may be provided in whole or in part and subject to conditions that the Minister for Justice and Border Control determines. The language at section 8 appears to offer standard discretion conditions and would not establish unduly restrictive or unreasonable conditions.

605. Section 85 of AMLA provides that the ODPP may refuse a request if the action sought by the request is contrary to any provision of the constitution or the execution of the request is likely to prejudice the national interest.

606. The above provisions have not been tested. It is unclear how the Minister for Justice and Border Control and ODPP would exercise his powers.

***Efficiency of Processes (c. 36.3):***

607. An authorised officer has not yet been appointed to give effect to various processes under the MACMA. As the MACMA and relevant sections of the AMLA have never been utilised, the efficiency of the process has not been tested.

***Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):***

608. Possible involvement of fiscal matters is not a ground of refusal under MACMA. Under paragraph 85(1)(c) AMLA, the ODPP may not refuse a request solely on the ground that the request relates to an offence that relates to matters of taxation or currency.

609. Section 79 of the CTTOC clarifies that despite anything in the MACMA, terrorist acts under the CTTOC are taken, for the purpose of mutual assistance, not to be a fiscal offence.

610. A concern is that many of the measures available in the AMLA are only available in relation to the tainted property, unlawful activity or ML. In each case, with the absence of any fiscal offences in Nauru, the wording is restrictive in relation to tax matters under and may hamper Nauru's ability to provide assistance in many instances.

***Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):***

611. There are no secrecy or confidentiality laws to impede assistance in cases of MLA relating to ML or TF. In relation to TF, it is clarified that providing assistance will not be impeded by secrecy and confidentiality laws. Subsection 79(2) of the CTTOC clarifies that no requests for MLA in relation to an offence under the CTTOC may be declined solely on the basis of bank secrecy.

***Availability of Powers of Competent Authorities (applying R.28, c. 36.6):***

612. Under section 18 of MACMA, the Minister for Justice and Border Control may direct an authorised officer to apply for search warrants pursuant to a request for assistance. "Authorised officer" means a person or a person in a class of persons, designated, in writing, by the Ministry of Justice. At the time of the onsite visit, no person had been designated.

613. Under section 42 of POCA, a police officer who is authorised under MACMA to apply to the court for a search warrant, may search and seize tainted property for foreign serious offences. But no authorisation under MACMA has yet been made.

614. Therefore the powers under MACMA and POCA cannot be used.

***Avoiding Conflicts of Jurisdiction (c. 36.7):***

615. Nauru states that issues of avoiding conflicts of jurisdiction would be dealt with on a case by case basis. There is uncertainty as to the approach of Nauru when facing conflicts of jurisdiction. No previous MLA case before

***Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):***

616. The powers could not be used as no designation of authorized officer has yet been made.

**RECOMMENDATION 37**

***Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):***

617. By the definition of "criminal matter" under MACMA, dual criminality is required. It is unclear whether dual criminality is required for non-compulsory measures. Dual criminality does not seem to be an impediment to providing mutual legal assistance.

***International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):***

618. Dual criminality is a requirement by the definition of "criminal matter" under MACMA and "serious offences" under POCA.

## **RECOMMENDATION 38**

### ***Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):***

619. Sections 38 to 46 of MACMA provide for the assistance regarding proceeds of crime. Section 38 provides for the enforcement of foreign forfeiture orders and foreign pecuniary penalty orders for a serious offence. Serious offence has the same meaning as that in POCA, i.e. an offence with an imprisonment for not less than 12 months. Under section 45, the court may make a restraining order under POCA against property for a serious offence pursuant to a foreign request.

### ***Property of Corresponding Value (c. 38.2):***

620. Pursuant to section 38 of MACMA, a foreign pecuniary penalty order representing property of corresponding value may be registered in Nauru for enforcement. A “Foreign pecuniary penalty order” is defined (section 3) to mean an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of the value) of what the person gained from an offence against the law of that country.

### ***Coordination of Seizure and Confiscation Actions (c. 38.3):***

621. Nauru has had no mutual legal assistance experience, so has no basis on which to plan for coordination of seizure and confiscation actions.

### ***International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):***

622. TF is by definition a serious offence under MACMA. Therefore the provisions under sections 38 to 46 apply to TF as well.

### ***Asset Forfeiture Fund (c. 38.4):***

623. Nauru has established a confiscated asset fund under section 100 of the POCA, which is to be administered by the Secretary of Justice. The Fund is to manage assets paid under forfeiture orders, pecuniary penalty orders and those funds paid by foreign states in respect of confiscated assets. The Minister of Finance may authorise property in the fund to apply to law enforcement, to share assets with foreign jurisdictions, and to meet the remuneration expenses of the administration.

### ***Sharing of Confiscated Assets (c. 38.5):***

624. Pursuant to subsection 40(3) of MACMA, the Minister for Justice and Border Control may enter an arrangement with a foreign country to share with that country the amount forfeited or paid pursuant to a registered foreign forfeiture order or foreign pecuniary penalty order. Under section 100 (4)(b) assets held by the Confiscated Assets Fund may be shared with a foreign jurisdiction to satisfy obligations on Nauru under a treaty or an MLA arrangement.

### ***Additional Element (R 38) – Recognition of Foreign Orders (applying c. 3.7 in R.3, c. 38.6):***

625. Under section 73 of the AMLA, the ODPP may apply to court for a forfeiture order against terrorist property. Terrorist property has the same meaning as CTTOC, i.e. property that has been, is being, or is likely to be used to commit a terrorist act or by a terrorist group, or property derived from property owned or controlled, by or on behalf of a specified entity. Although no entity has yet been listed or declared under sections 4 or 5 of CTTOC.

626. Sections 38 to 46 MACMA only apply where the person concerned has been convicted (paragraph 38(1)(b)).

**Statistics (applying R.32) and Analysis of effectiveness**

627. There has been no previous mutual legal assistance case in Nauru. Effectiveness of implementation has not been tested.

**6.3.2. Recommendations and Comments**

628. Nauru has the necessary legal framework for providing and obtaining mutual legal assistance.

- Nauru should take immediate action to designate the authorized officers under MACMA so that the powers available under MACMA may be utilized.
- Nauru should ensure that restrictions on competent authorities’ ability to take actions under the AMLA in relation to tax offences do not impede Nauru’s response to requests for assistance pursuant to the MACMA.
- Ensure that MACMA or another statute can support the provision of mutual assistance for the service of judicial documents.

**6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relevant to s.6.3 underlying overall rating</b>
<b>R.36</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• No authorized officer has yet been designated under MACMA and powers cannot be used until such designation takes place.</li> <li>• Given the dual criminality, deficiencies with the scope of coverage of predicate offences for the ML offence may undermine the effective implementation of MLA provisions</li> </ul>
<b>R.37</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• It is unclear whether dual criminality is required for non-compulsory measures.</li> </ul>
<b>R.38</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Given the dual criminality, deficiencies with the ML offence may undermine the effective implementation of MLA provisions</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Assistance concerning TF offences may be provided under MACMA, POCA and CTTOC, but it has never been tested.</li> <li>• Deficiencies with the TF offence may undermine the effective implementation of MLA provisions</li> <li>• This is a composite rating (see R39 and R40)</li> </ul>

## **6.4. Extradition (R.37, 39, SR.V)**

### **6.4.1. Description and Analysis**

#### ***Legal Framework:***

629. Nauru's *Extradition Act 1973* (EA) establishes a basic extradition framework for fugitive offenders. Nauru has not yet appointed a central authority for extradition requests from foreign countries. Under section 3, a person may only be arrested and returned to a country designated under subsection 4(1). No country has yet been designated. Nauru also has not signed any bilateral agreements for extradition so far. Nauru confirmed that multilateral conventions require similar designation before they can be applicable. Section 6 EA provides for the general restrictions on return, which set out standard grounds for refusal.

#### **RECOMMENDATION 37**

##### ***Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):***

630. Dual criminality is required as contained in the definition of "relevant offences" under paragraph 5(1)(b) Extradition Act. But the conduct test is adopted, i.e. the act or omission constituting the offence is considered, not the categories or denominations of the offence. Dual criminality would not appear to undermine extradition.

#### **RECOMMENDATION 39**

##### ***Money Laundering as Extraditable Offence (c. 39.1):***

631. ML is an extraditable offence under EA pursuant to paragraph 5(1)(a) and Schedule to EA.

##### ***Extradition of Nationals (c. 39.2):***

632. According to section 3, any person found in Nauru may be liable to be returned pursuant to the provisions of EA, including nationals of Nauru.

##### ***Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):***

633. Cooperation under section 3 for the extradition of a national does not necessitate local prosecution in the absence of extradition. There is no previous extradition case to test this provision.

##### ***Efficiency of Extradition Process (c. 39.4):***

634. The Extradition Act provides for the framework for extradition, but there is no previous extradition case. It is unclear whether the court procedures would be efficient in dealing with extradition cases.

635. There are no simplified procedures for extradition under the Extradition Act

##### ***Extradition for TF purposes SRV (V.4)***

636. Offences under CTTOC are extraditable offences under pursuant to paragraph 5(1)(a) and Schedule to EA.

*Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)*

637. There is no simplified procedure for extradition under EA. In practice, under immigration laws, Nauru is likely to be able to put a foreigner onto a flight to either Australia or Fiji, as there is no other means of regular transport from Nauru.

**Statistics (applying R.32) & Effectiveness**

638. As no jurisdiction or convention has been designated under the Extradition Act, at present extradition is not possible. There has been no extradition case in Nauru. Effectiveness of implementation has not been tested.

**6.4.2. Recommendations and Comments**

- Take immediate action to designate countries and/or conventions under the Extradition Act, so that the provisions under EA can be implemented.
- Bring the ML and TF offences into line with international standards to support the fullest range of mutual legal assistance, including extradition.

**6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relevant to s.6.4 underlying overall rating</b>
<b>R.39</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Although the Extradition Act is in force, no jurisdiction or convention has been designated. Therefore, extradition is not currently possible.</li><li>• Given dual criminality requirements, deficiencies with the ML offence may undermine the effective implementation of mutual legal assistance provisions</li></ul>
<b>R.37</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• Composite rating</li></ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The inability to use the Extradition Act would mean that extradition in relation to TF would not be possible.</li><li>• This is a composite rating, see R39 and R40</li></ul>

## **6.5. Other Forms of International Co-Operation (R.40 & SR.V)**

### **6.5.1. Description and Analysis**

#### ***Legal Framework:***

639. Sections 8, 10 and 11 of the AMLA and section 33 of the CTTOC provide the legal basis for information exchange on AML/CFT matters outside of the mutual legal assistance process.

#### ***Widest Range of International Cooperation (c. 40.1 & SRV)***

640. Subsection 8(m) of the AMLA authorises the FIU to disclose reports or any other information it receives to an agency of a foreign state or an international organisation that has powers and duties similar to those of the FIU, if the FIU has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a ML or TF offence, an unlawful activity or an offence substantially similar to any of those offences.

641. Section 10 of the AMLA provides that the disclosure of such reports or information is contingent either on a formal agreement or arrangement between the FIU and the foreign state or international organisation, or on terms and conditions agreed upon by the relevant parties at the time of disclosure. Such terms and conditions must include a restriction on the use of the report or information to purposes relevant to the investigation or prosecution of a ML or TF offence, unlawful activity or similar offence, and must stipulate that the report or information be treated in a confidential manner and not be further disclosed without the express consent of the FIU (subsection 10(2) of AMLA).

642. The usage restriction in sub-section 10(2) appears to prevent the exchange of information for regulatory purposes, e.g. between the FIU (in its role as AML/CFT supervisor and regulator) and a foreign banking regulator. It also appears to prevent the exchange of information relating to tax offences (see paragraphs 662 and 663 below).

643. In relation to information exchange with foreign countries relating to terrorist acts and terrorist organisations, section 33 of the CTTOC provides that the Secretary for Justice and Border Control may disclose to the appropriate authority of a foreign country any information in his possession relating to the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts; the use of forged or falsified travel papers by same; the traffic in explosives or other lethal devices by same; and the use of communication technologies by terrorist groups; provided the disclosure is not prohibited by any provision of law and does not prejudice national security or public safety.

#### ***Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1 & SRV):***

644. The FIU is currently working on entering into an MoU with the Fijian FIU and the regional group of Pacific Islands FIUs. The FIU also intends to become a member of the Egmont Group once sufficient capability and functionality has been established. There is no current information exchange between the FIU (in its capacity of regulator/supervisor) and foreign regulators. Such exchanges appear to be prevented by the usage restriction in sub-section 10(2) of AMLA.

645. There is cooperation between the NPF and foreign law enforcement agencies, particularly assistance provided by the Australian Federal Police. The NPF is also seeking to re-establish a link with Interpol for which funding has been provided by Interpol.

646. Nauru is a member of the Oceania Customs Organization (OCO). In addition, Nauru Customs informally exchanges information with other Customs agencies in the region.

647. There are no statistics available on information exchanged.

***Clear and Effective Gateways for Exchange of Information (c. 40.2 & SRV):***

648. In 2010 the NPF commenced linkages with the Pacific Transnational Crime Coordination Centre (PTCCC) based in Samoa. There have been initial discussions with the PTCCC to set up a Mini TCU in the NPF as part of the wider regional TCU network. The head of the NPF CIU is Nauru's contact officer for the PTCCC. The Commissioner of Police is also a member of the Pacific Islands Chiefs of Police Conference.

***Spontaneous Exchange of Information (c. 40.3 & SRV):***

649. Apart from the abovementioned restrictions, the relevant legislation does not preclude the spontaneous exchange of information.

***Making Inquiries on Behalf of Foreign Counterparts (c. 40.4 & SRV):***

650. Making inquiries on behalf of foreign counterparts is not explicitly provided for or prohibited in legislation.

***FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1 & SRV):***

651. Authorising the FIU to make inquiries on behalf of foreign counterparts is not explicitly provided for or prohibited in legislation.

***Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5 & SRV):***

652. Conducting of investigations on behalf of foreign counterparts is not explicitly provided for or prohibited in legislation.

***No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6 & SRV):***

653. The usage restriction in paragraph 10(2)(a) of the AMLA (use of the report or information disclosed must be for purposes relevant to the investigation of a ML/TF offence or unlawful activity) appears to prevent the exchange of information for regulatory purposes, e.g. between the FIU and a foreign banking regulator, and the exchange of information relating to tax offences (see paragraph 651 above). Section 33 of the CTTOC on the exchange of information relating to terrorist groups and terrorist acts does not contain disproportionate or unduly restrictive conditions.

***Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7 & SRV):***

654. The provision of assistance because of possible involvement of fiscal matters appears to be prevented by the wording of subsection 10(2) of the AMLA, as the definition of "unlawful activity" in section 2 of the AMLA expressly excludes tax offences.

655. Nauru is a member of the Organisation for Economic Co-operation and Development (OECD)'s Global Forum on Transparency and Exchange of Information. However, it is one of only three jurisdictions that have committed to the internationally agreed tax standard (which was developed by the OECD in co-operation with non-OECD countries and requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes), but have not yet signed any Tax Information Exchange Agreements (TIEA)<sup>21</sup>.

***Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8 & SRV):***

656. Apart from a standard national security or public safety restriction in the CTTOC, there is nothing in the AMLA or CTTOC that would limit the exchange of intelligence or other available information under relevant sections of both Acts.

***Safeguards in Use of Exchanged Information (c. 40.9 & SRV):***

657. Apart from the *Official Information Act 1976*, which deals with information obtained by government officers in their role and capacity as such officers, Nauru has no legislation dealing with privacy or data protection. However the AMLA stipulates that any agreements or arrangements entered into must include a provision that the information exchanged will be treated in a confidential manner.

***Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1 & SRV):***

658. Diagonal cooperation and exchange of information is not provided for in Nauruan legislation.

***Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11 & SRV)***

659. There is no provision in the AMLA or any other relevant legislation that would prevent the FIU from requesting information from another competent authority pursuant to a request from a foreign FIU.

***Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):***

660. There is no provision in the AMLA or any other relevant legislation that would prevent the FIU from requesting information from another competent authority pursuant to a request from a foreign FIU.

**Statistics (applying R.32) & Effectiveness**

661. There are no available statistics relating to non-MLA international cooperation. It is difficult to assess the effectiveness and efficiency of other forms of international cooperation, suffice to note that there is a legal framework for such information exchange that has rarely been used to date.

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<sup>21</sup> At the time of drafting the MER Nauru was in discussion with Australia regarding a TIEA.

662. Given the nature of the small Nauru offshore centre, there is a concern that the supervisor’s ability to share information with foreign counterparts would be undermined by restrictions on sharing information that may relate to foreign tax offences.

**6.5.2. Recommendations and Comments**

663. Nauru has the legal framework for the exchange of information outside of the MLA process, however it is noted that the wording of subsection 10(2) of the AMLA in conjunction with the definition of “unlawful activity” in section 2 appears to prevent the exchange of any tax offence related information, as well as the exchange of information by the FIU for regulatory purposes.

664. Given the small size of the jurisdiction, there has been limited scope for information exchange. The efficacy of the process for such exchanges is difficult to assess in the absence of practical examples.

- Nauru should strengthen formal and informal linkages between its FIU, other relevant agencies and their international counterparts to facilitate the free exchange of information and wide-ranging international cooperation.
- Nauru should consider establishing MoUs with countries in the region in particular; become a member of the Egmont Group as soon as practicable and signing TIEAs with strategically important partner jurisdictions.
- Nauru should remove the current restrictions on the exchange of regulatory and tax offences related information (AMLA amendments or some other means).

**6.5.3. Compliance with Recommendation 40 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relative to s.6.5 underlying overall rating</b>
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legislative restriction on the exchange of regulatory information and tax offence related information.</li> <li>• Narrow range of formal and informal agreements with jurisdictions and relevant organisations</li> <li>• In the absence of concrete examples of non-MLA international cooperation, effectiveness of current mechanisms difficult to assess</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• This is a composite rating – see Recs 36 to 39</li> </ul>

## 7. OTHER ISSUES

### 7.1. Resources and Statistics

665. This is a composite rating. Finalised ratings boxes for recommendations 30 and 32 are below

	Rating	Summary of factors underlying rating
R.30	PC	<ul style="list-style-type: none"><li>• The absence of a structure to gain more resources for the FIU at peak times undermines effectiveness.</li><li>• There is a gap with training and awareness of border control staff on AML/CFT issues.</li><li>• Resources, capacity and expertise to conduct and prosecute ML/TF investigations are limited.</li></ul>
R.32	PC	<ul style="list-style-type: none"><li>• Nauru lacks systems for keeping key AML/CFT statistics</li><li>• Statistics of the implementation of the overlapping cross-border reporting regimes had not been made available to the FIU at the time of the onsite visit.</li></ul>

### 7.2. Other relevant AML/CFT Measures or Issues

666. At the time of the onsite visit, Nauru had no operational bank and there was no financial institution offering financial services in Nauru, with the exception of one Western Union branch operated from a hardware store. The economy is entirely cash based and reliant on formal and informal remittance. The Government of Nauru is very actively seeking a bank to establish a branch or subsidiary in Nauru to conduct domestic banking business in Nauru.

667. With the abolition of the offshore banking sector in 2004, there is now only a relatively small offshore company registry operating in Nauru. At present only 59 corporations are registered under Nauru law and significant portion of these are formed by the Nauru government as government owned corporations. Fewer than five corporations per year have been registered over the last five years. Eleven trustee company licenses are in operation. No new trust company licenses have been issued in the previous 10 years. Fifteen unit trusts have been formed under the existing licenses.

668. The offshore companies and trusts represent a residual risk that Nauruan legal persons or arrangements could be used for laundering the proceeds of foreign offences, although the very low rate of company and trust formation in the sector may indicate that the risks are relatively low.

669. Nauru is a low crime jurisdiction. The very narrow economic base, the absence of financial institutions and the very strict land tenure and associated restrictions on foreign investment sees very few opportunities to introduce proceeds of crime into the formal Nauru economy.

670. The following steps are recommended as priorities, given the situation facing Nauru:

- The limited resources available for AML/CFT in Nauru should be better supported by strategies of prioritised implementation.
- Nauru should ensure that the Nauru Agency Corporation and Nauru Trustee Corporation prioritise implementation of AML/CFT controls for the offshore sector.

- Nauru should adopt a national AML/CFT strategy commensurate with the resources available to the government.
- Nauru should continue to strive to attract a banking institution to ensure that a wider range of financial services are available to Nauruans and that these fall under national AML/CFT controls.
- Nauru should push on with reforms to pass a comprehensive Criminal Code to cover all predicate offences, including comprehensive corruption offences.

**Table 1: Ratings of Compliance with FATF Recommendations**

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>22</sup></b>
<b>Legal systems</b>		
1. ML offence	<b>PC</b>	<ul style="list-style-type: none"> <li>• There are gaps in the coverage of domestic predicate offences – no smuggling and no insider trading; some gaps with arms trafficking, corruption, fraud, piracy/counterfeiting, environmental offences, kidnapping</li> <li>• Property does not extend to all instruments evidencing title to property</li> <li>• Clarification (case law or amended legislation) is needed for extraterritorially of committed predicate offences ML as a standalone offence without the need for a predicate conviction</li> </ul>
2. ML offence —mental element and corporate liability	<b>LC</b>	<ul style="list-style-type: none"> <li>• Effectiveness has not been established</li> </ul>
3. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>• Cascade of gaps in predicates</li> <li>• No coverage of property indirectly derived from proceeds of crime</li> <li>• Property held by 3rd parties is not subject to confiscation.</li> <li>• Despite some use of the provisions, overlapping regimes may impede effective implementation.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
5. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AMLA has gaps in coverage of identification of beneficial owners and enhanced CDD for high risk customers</li> <li>• While the AMLA has an obligation to identify and verify customers, the required elements of customer identity in the CDD process in only contained in unenforceable CDD guidelines</li> <li>• Effective implementation has not been established with the single financial institution operating in Nauru.</li> </ul>
6. Politically exposed persons	<b>LC</b>	<ul style="list-style-type: none"> <li>• Obligation to identify PEPs does not extend to beneficial owners of PEPs</li> </ul>
7. Correspondent banking	<b>NA</b>	<ul style="list-style-type: none"> <li>• Although the AMLA contains comprehensive AML/CFT controls over cross-border correspondent relationships, in the absence of any bank in Nauru at the time of the onsite visit, this recommendation is rated NA.</li> </ul>

<sup>22</sup> These factors are only required to be set out when the rating is less than Compliant.

8. New technologies & non face-to-face business	<b>NC</b>	<ul style="list-style-type: none"> <li>• Provisions are not evident in the law</li> <li>• No guidelines issued on new technology or non-face to face business</li> </ul>
9. Third parties and introducers	<b>LC</b>	<ul style="list-style-type: none"> <li>• Clarification of ultimate responsibility resting with the financial institution is not set out.</li> </ul>
10. Record-keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• The requirement to keep records of business correspondence is not fully covered.</li> </ul>
11. Unusual transactions	<b>LC</b>	<ul style="list-style-type: none"> <li>• Gap in explicit requirement for record keeping for findings in relation to unusual transactions.</li> </ul>
12. DNFBP–R.5, 6, 8–11	<b>PC</b>	<ul style="list-style-type: none"> <li>• Checking of beneficial ownership is not included in the AMLA for DNFBP</li> <li>• Enhanced CDD for high risk customers not present</li> <li>• Obligation to identify PEPs doesn't extend to beneficial owners</li> <li>• There is no requirements in the legal framework to pay special attentions to non-face to face transactions or emerging technologies</li> <li>• The requirement to keep records of business correspondence is not fully covered.</li> <li>• There are no provisions to take counter-measures where countries insufficiently apply FATF recommendations</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• Gap in domestic predicates impacts on the scope of coverage of ML</li> <li>• Funding of an individual terrorist or funding a terrorist organisation in Nauru, other than one designated, is not included as an STR reporting obligation.</li> <li>• No STRs have been filed and effectiveness has not been established</li> </ul>
14. Protection & no tipping-off	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
15. Internal controls, compliance & audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• Audit requirements do not stipulate the need for independent audit and there is no independent audit function.</li> <li>• Compliance officers are not required to be at management level.</li> <li>• No clear obligation for employee training to be ongoing</li> <li>• Effectiveness is neutral</li> </ul>
16. DNFBP–R.13–15 & 21	<b>PC</b>	<ul style="list-style-type: none"> <li>• The full range of predicate offences are not covered for STRs</li> <li>• Restrictive provisions regarding tax offences may undermine the operation of the STR reporting regime.</li> <li>• FIU yet to conduct education and awareness sessions for the DNFBP sectors</li> <li>• The AMLA does not mention the requirement of independent audit provisions and compliance officers are not required to be at management level.</li> <li>• No clear obligation for employee training to be ongoing</li> <li>• There are no legal requirements to apply counter measures for countries with weak AML/CTF regimes and do not apply FATF standards.</li> </ul>

17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AMLA is not clear whether the FIU can issue administrative directions and orders</li> <li>• The FIU cannot take out measures specifically against directors or senior management</li> <li>• There is not a full range of compliance measures, such as proportionate penalty notices or a range of fines.</li> <li>• Effectiveness has not been established</li> </ul>
18. Shell banks	<b>PC</b>	<ul style="list-style-type: none"> <li>• No clear prohibition on maintaining a respondent banking relationships with shell bank</li> <li>• No binding requirements to ensure that in the future, financial institutions in Nauru are not permitted to allow their correspondent financial institutions to have respondent institutions which are shell banks</li> </ul>
19. Other forms of reporting	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
20. Other DNFBP & secure transaction techniques	<b>C</b>	<ul style="list-style-type: none"> <li>• Fully observed</li> </ul>
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>• No guidance to financial institutions on how to identify which countries have weak AML/CTF regimes</li> <li>• There is no legal authority to apply a range of appropriate countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.</li> </ul>
22. Foreign branches & subsidiaries	<b>NA</b>	<ul style="list-style-type: none"> <li>• This is covered in the AMLA, but there are no relevant financial institutions in Nauru</li> </ul>
23. Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>• There has been minimal supervision of the financial institution to date</li> <li>• The FIU has no strategies, policies or procedures to undertake supervision of the financial sector</li> <li>• There are provision to exclude criminals controlling some financial institutions but not for alternative remittance businesses</li> <li>• There are no requirements for alternative remittance dealers to be licensed or registered</li> </ul>
24. DNFBP—regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>• No effective AML/CTF supervision has occurred for the company service provider or the trust service provider</li> <li>• The FIU has no strategies, policies or procedures to undertake supervision of the DNFBP</li> </ul>
25. Guidelines & Feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited guidance issued, which does not reflect current legislative obligations</li> <li>• The FIU does not have policies, procedures or systems in place to provide feedback.</li> <li>• The FIU has not held information/education sessions for industry to explain the STR obligations</li> <li>• The FIU has not provided constructive feedback</li> <li>• Only one guideline has been issued but no further action since 2009</li> <li>• There are no strategies, policies or procedures to develop, issue</li> </ul>

		guidance or engage with the financial sector or DNFBPs
<b>Institutional and other measures</b>		
26. The FIU	PC	<ul style="list-style-type: none"> <li>• Dissemination is limited to the ODPP, rather than the police</li> <li>• There is a lack of a suitable data management system for the FIU.</li> <li>• Guidance to RIs on the manner and form of reporting is out-dated.</li> <li>• The FIU does not issue an annual report, including typologies</li> <li>• A lack of autonomy to determine staffing may undermine effectiveness.</li> <li>• Effectiveness has not yet been established</li> </ul>
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> <li>• Resources, capacity and expertise to conduct and prosecute ML/TF investigations are limited.</li> <li>• Lack of knowledge of the application of the AMLA and POCA has a negative impact on effectiveness</li> </ul>
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> <li>• Relevant powers are available in various laws including POCA but the effectiveness of the powers has not been demonstrated.</li> </ul>
29. Supervisors	LC	<ul style="list-style-type: none"> <li>• The AMLA is not clear whether the FIU has specific powers to sanction directors or senior management</li> </ul>
30. Resources, integrity, and training	PC	<ul style="list-style-type: none"> <li>• The absence of a structure to gain more resources for the FIU at peak times undermines effectiveness.</li> <li>• There is a gap with training and awareness of border control staff on AML/CFT issues.</li> <li>• Resources, capacity and expertise to conduct and prosecute ML/TF investigations are limited.</li> </ul>
31. National co-operation	LC	<ul style="list-style-type: none"> <li>• There are no formal arrangements for the exchange and sharing of information in place..</li> </ul>
32. Statistics	PC	<ul style="list-style-type: none"> <li>• Nauru lacks systems for keeping key AML/CFT statistics</li> <li>• Statistics of the implementation of the overlapping cross-border reporting regimes have not been kept and made available to the FIU.</li> </ul>
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> <li>• The information kept by the Company Registry does not extend to beneficial ownership information.</li> <li>• Bearer shares and bearer share warrants are able to be issued for Nauru corporations without beneficial ownership being recorded.</li> </ul>
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> <li>• There is no mechanism to collect beneficial ownership information in trusts</li> <li>• While beneficiaries of unit trusts issued in the offshore sector are recorded, the information does not extend to beneficial ownership or the identity of settlors</li> </ul>
<b>International Cooperation</b>		
35. Conventions	NC	<ul style="list-style-type: none"> <li>• Vienna and Palermo conventions not ratified and not fully implemented</li> </ul>
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>• No authorized officer has yet been designated under MACMA and powers cannot be used until such designation takes place.</li> <li>• Given the dual criminality, deficiencies with the scope of coverage of predicate offences for the ML offence may</li> </ul>

		undermine the effective implementation of MLA provisions
37. Dual criminality	<b>LC</b>	<ul style="list-style-type: none"> <li>• It is unclear whether dual criminality is required for non-compulsory measures.</li> </ul>
38. MLA on confiscation and freezing	<b>LC</b>	<ul style="list-style-type: none"> <li>• Given the dual criminality, deficiencies with the ML offence may undermine the effective implementation of MLA provisions</li> </ul>
39. Extradition	<b>PC</b>	<ul style="list-style-type: none"> <li>• Although the Extradition Act is in force, no jurisdiction or convention has been designated. Therefore, extradition is not currently possible under this Act.</li> <li>• Given dual criminality requirements, deficiencies with the ML offence may undermine the effective implementation of MLA provisions</li> </ul>
40. Other forms of co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legislative restriction on the exchange of regulatory information and tax offence related information.</li> <li>• Narrow range of formal and informal agreements with jurisdictions and relevant organisations</li> <li>• In the absence of concrete examples of non-MLA international cooperation, effectiveness of current mechanisms difficult to assess</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>PC</b>	<ul style="list-style-type: none"> <li>• Nauru is a party to the TF Convention; however there are gaps with its implementation.</li> <li>• The UNSCRs have not been implemented in Nauru</li> </ul>
SR.II Criminalize terrorist financing	<b>PC</b>	<ul style="list-style-type: none"> <li>• No provision for criminalising funding terrorist organisations or individual terrorists, except for those prescribed by the Minister.</li> <li>• The absence of prescription of any terrorist group or individual at the time of the onsite visit resulted in a complete gap for groups and individuals</li> <li>• There is some uncertainty regarding the scope of criminal liability for legal persons</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>NC</b>	<ul style="list-style-type: none"> <li>• No proper basis for effective implementation of UNSCR 1267 or 1373 to freeze terrorist funds without delay</li> <li>• Due to a lack of prescription, the mechanism for 1267 was not in effect at the time of the onsite visit.</li> <li>• Requirements for the Minister to gazette each update to the 1267 Consolidated list may add to delays.</li> </ul>
SR.IV Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• Funding of an individual terrorist or funding a terrorist organisation in Nauru, other than one designated, is not included as an STR reporting obligation.</li> </ul>
SR.V International cooperation	<b>PC</b>	<ul style="list-style-type: none"> <li>• Assistance concerning TF offences may be provided under MACMA, POCA and CTTOC, but it has never been tested.</li> <li>• Deficiencies with the TF offence may undermine the effective implementation of MLA provisions</li> <li>• The inability to use the Extradition Act would mean that extradition in relation to TF would not be possible.</li> </ul>
SR.VI AML/CFT requirements	<b>PC</b>	<ul style="list-style-type: none"> <li>• No legal obligations to register MVTS (or their agents)</li> <li>• No monitoring, education or follow up action by the FIU to</li> </ul>

for money/value transfer services		<p>ensure the MVTS are complying with their AMLA obligations.</p> <ul style="list-style-type: none"> <li>• There is an absence of a range of sanctions proportionate to the severity of non-compliance.</li> <li>• Gaps that apply to recommendations 6, 8, 9, 10, 11, 15, 17, 21 and 22 also apply.</li> <li>• No requirement to keep a list of MVTS agents</li> </ul>
SR.VII Wire transfer rules	<b>PC</b>	<ul style="list-style-type: none"> <li>• clearly what information should be included</li> <li>• No detailed instruction issued by the competent authorities to financial institutions on the requirements of SRVII.</li> <li>• No effective monitoring to date</li> </ul>
SR.VIII Non-profit organizations	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no legal framework to support the formation or operation of NPOs in Nauru.</li> <li>• No aspect of SRVIII has yet been implemented in Nauru.</li> </ul>
SR.IX Cash Border Declaration & Disclosure	<b>PC</b>	<ul style="list-style-type: none"> <li>• The declaration system shows some gaps</li> <li>• Obligations under the POCA do not apply to postal and cargo streams.</li> <li>• Authorities do not have clear authority to request and obtain information on the origin of detected currency / BNIs.</li> <li>• Cross border declarations are not proactively shared with the FIU</li> <li>• Sanctions are not available for cash couriers that are related to TF offences.</li> <li>• Targeted financial sanctions are not implemented in relation to cross border declaration systems.</li> <li>• Despite some use of the provisions, overlapping legal framework for cross border reporting is confusing and comprehensive controls are not being implemented</li> </ul>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>2. Legal System and Related Institutional Measures</b>	
<b>Criminalization of Money Laundering (R.1, 2, &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Nauru should amend relevant legislation to:               <ul style="list-style-type: none"> <li>○ ensure coverage of the widest scope of predicate offences.</li> <li>○ define ‘property’ to fully cover all instruments evidencing title to property as required under the convention.</li> </ul> </li> <li>• Nauru should provide case law or consider amending legislation to:               <ul style="list-style-type: none"> <li>○ Confirm extraterritorially of committed predicate offences</li> <li>○ clarify that when proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence</li> </ul> </li> <li>• Nauru should effectively use the AMLA to ‘follow the money’ associated with crime.</li> </ul>
<b>Criminalization of Terrorist Financing (SR.II &amp; R.32)</b>	<ul style="list-style-type: none"> <li>• Criminalisation of TF in relation to organisations and individual terrorists should be comprehensively covered in keeping with the FATF standards, without requiring prescriptions to take place.</li> <li>• Clarification should be provided on how Section 76 of the CTTOC applies to corporations registered outside of Nauru.</li> <li>• To ensure some coverage of terrorist groups and individuals, Nauru should take immediate action to prescribe entities under section 4 or declare entities under section 5. Otherwise, section 10(2) cannot be utilized.</li> </ul>
<b>Confiscation, freezing, and seizing of proceeds of crime (R.3 &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Ensure that proceeds from the wide range of predicate offences is subject to confiscation;</li> <li>• Cover property indirectly derived from proceeds of crime</li> <li>• Ensure that property held by 3rd parties is subject to confiscation.</li> <li>• Effectively use the POCA and AMLA to ‘follow the money’ associated with crime.</li> </ul>
<b>Freezing of funds used for terrorist financing (SR.III &amp; R.32)</b>	<ul style="list-style-type: none"> <li>• Review the legal and procedural framework to effectively implement SRIII, including requiring property owned or controlled by a designated terrorist entity to be identified and frozen without delay. This will require amending the CTTOC to provide for powers and mechanisms to freeze property without delay in the case of a match.</li> <li>• Issue implementing regulations</li> <li>• Provide guidance to the one financial institution and any other bodies which may have obligations to implement targeted financial sanctions under the CTTOC.</li> <li>• Consider amending the CTTOC to avoid the need for the Minister to gazette each change to the 1267 consolidated list.</li> </ul>
<b>The Financial Intelligence Unit and its functions (R.26, 30 &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Provide for direct dissemination of STRs to the NPF under the AMLA.</li> <li>• Amend the STR reporting form and STR guideline to reflect the AMLA 2008.</li> </ul>

	<ul style="list-style-type: none"> <li>• Given the Supervisor’s multiple functions and responsibilities, the current structure of the FIU impedes the ability of the FIU to fulfil its statutory function. Nauru should: <ul style="list-style-type: none"> <li>○ Develop a structure for the FIU within the DJBC to allow the FIU to identify and deputise officers to perform some FIU functions at times of peak demand. This would operationalise the structure employed during the Mutual Evaluation.</li> <li>○ Give formal authority/discretion to be exercised by the Supervisor to delegate AML/CFT related duties to designated officers on a part-time basis when needed to implement FIU functions.</li> <li>○ develop a suitable data management (excel spreadsheet) and analysis system to support analysis.</li> <li>○ give the FIU authority to determine its staff recruitment to better ensure that it is protected from undue influence and interference the.</li> <li>○ Allocate a dedicated budget to the FIU which would be under the control of the FIU Supervisor to cover operational expenses.</li> <li>○ Reach out to the reporting entity to ensure that RIs understand the manner and forms of reporting and other responsibilities under the AMLA.</li> <li>○ Engage with partner agencies, in particular the NFP and the Audit Office to enhance information sharing.</li> <li>○ Ensure the FIU gives feedback to financial institutions on STR reporting, emerging trends or typologies. This could be included in an FIU annual report.</li> <li>○ The FIU should maintain comprehensive statistics on its activities.</li> </ul> </li> <li>• Nauru should consider: <ul style="list-style-type: none"> <li>○ enhancing information sharing agreements with Pacific Islands Forum members’ FIUs and other key regional FIUs.</li> <li>○ applying for membership of the Egmont Group.</li> </ul> </li> </ul>
<p><b>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 &amp; 32)</b></p>	<ul style="list-style-type: none"> <li>• The NPF should continue to improve capacity and capability with regards to specialist investigative skill in order to ‘follow the money’ behind profit driven crime.</li> <li>• Law enforcement agencies and the ODPP should increase their awareness of the powers under the AMLA and the POCA for search / seizure / production and other orders to support investigation of crime and to ‘follow the money’.</li> <li>• A training awareness programme should be implemented for both NPF and ODPP to address the current lack of awareness of the POCA and AMLA.</li> </ul>
<p><b>Cross Border Declaration or Disclosure (SR.IX)</b></p>	<ul style="list-style-type: none"> <li>• Implement a consolidated system for the declaration of cross border transportation of currency and BNI, including declaration documents which accurately reflect the legislation and the authorities under which declarations are sought..</li> <li>• Legislation or regulation should be amended to: <ul style="list-style-type: none"> <li>○ extend the scope of coverage of the declaration regime to passenger, mail and cargo</li> <li>○ ensure that border currency reports are promptly shared with</li> </ul> </li> </ul>

	<p>the FIU.</p> <ul style="list-style-type: none"> <li>○ provide authority for customs staff to question and enquire into the source and destination of currency as it crosses the border.</li> <li>○ clarify that search powers under the customs act should be available in respect of unaccompanied cargo or mail.</li> </ul> <ul style="list-style-type: none"> <li>● Implement training to raise awareness of Border Control Staff with respect to ML, TF and Currency Reporting legislation.</li> </ul>
<b>3. Preventive Measures–Financial Institutions</b>	
<b>Risk of money laundering or terrorist financing</b>	<ul style="list-style-type: none"> <li>● Nauru should conduct a risk assessment to support prioritised implementation of AML/CFT controls, taking into account the very small financial sector and few government resources.</li> </ul>
<b>Customer due diligence, including enhanced or reduced measures (R.5–8)</b>	<ul style="list-style-type: none"> <li>● AMLA (and its guideline) should be revised to cover: <ul style="list-style-type: none"> <li>○ Identification of beneficial owners, legal persons or other arrangements</li> <li>○ Consideration of adoption of risk based approach and enhanced due diligence for higher risk categories, and application of simplified/reduced CDD measures when appropriate and consideration of exceptional circumstances, to be precise timing of verification of identity</li> <li>○ Terminating a business relationship when an institution is unable to complete CDD before and after commencing the business relationship</li> <li>○ Including CDD requirements upon existing customer for such time as Nauru has financial institutions that keep accounts.</li> </ul> </li> <li>● Consider extending measures to those PEPs who hold prominent public functions domestically.</li> <li>● Amend the AMLA to include provisions for Recommendation 8 and issue new FIU guidelines to financial institutions on the necessary action that they should take.</li> <li>● Nauru could consider becoming party to and fully implementing the 2003 United Nations Convention against Corruption.</li> <li>● Amend the AMLA to require financial institutions to: <ul style="list-style-type: none"> <li>○ have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or TF schemes.</li> </ul> </li> <li>● have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing due diligence.</li> <li>● Issue new guidelines to financial institutions on the necessary action that they should take.</li> <li>● The FIU should establish adequate supervisory processes for financial institutions to support compliance and have a meeting on a regular basis regarding the state of compliance in each industry.</li> </ul>
<b>Third parties and introduced business (R.9)</b>	<ul style="list-style-type: none"> <li>● Revise the AMLA to cover the criteria of adequacy of application of FATF recommendation upon third parties conducting CDD and ultimate responsibility for CDD resting with the financial institution.</li> </ul>
<b>Financial institution secrecy</b>	<ul style="list-style-type: none"> <li>● FIU should perform socialization as well as supervision of the</li> </ul>

<b>or confidentiality (R.4)</b>	financial institution regarding requirements to disclose any information and document notwithstanding any obligation as to secrecy or other restriction.
<b>Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b>	<ul style="list-style-type: none"> <li>• Require records of business correspondence to be kept.</li> <li>• Define ‘full originator information’ in AMLA or regulation.</li> <li>• Supervise the financial institution providing wire transfers.</li> <li>• Issue guidance to the financial sector on wire transfers, including ‘full originator information’</li> </ul>
<b>Monitoring of transactions and relationships (R.11 &amp; 21)</b>	<ul style="list-style-type: none"> <li>• Require record keeping for findings of unusual transactions.</li> <li>• Guide financial institutions on how to identify jurisdiction not applying FATF recommendations and clarify the requirements for monitoring transactions to/from countries with weak AML/CTF regimes.</li> <li>• Disseminate information to its financial institutions about weaknesses in the AML/CTF systems of other countries.</li> <li>• Consider using section 97 of the AMLA as a basis for the Cabinet to make regulations on provisions to apply counter-measures to countries that continue not to apply, or insufficiently apply, FATF Recommendations and conduct transactions with Nauru.</li> </ul>
<b>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b>	<ul style="list-style-type: none"> <li>• The FIU should develop policies and procedures for STR feedback and advise financial institutions accordingly.</li> <li>• The FIU should conduct outreach to the financial institution and to better understand their obligations to submit STRs when they form a suspicion that a transaction may be related to ML, TF or a predicate offence.</li> <li>• Issue guidance to reflect current legislative obligations</li> <li>• Provide feedback and hold information/education sessions for industry to explain the STR obligations</li> <li>• Amend the AMLA and CTTOC to ensure the ML and TF reporting obligations meet international standards.</li> <li>• Consider amending the AMLA to cover tax issues if a goods and service tax is implemented.</li> </ul>
<b>Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b>	<ul style="list-style-type: none"> <li>• Section 24 of the AMLA should be revised to cover the requirement of the financial institution to have an independent audit function and compliance officer. Also, the requirement to train employee should be on an ongoing basis.</li> <li>• As there are no financial institution in Nauru at a level of development to include foreign branches or subsidiaries, this recommendation is not applicable at present. To ensure that Nauru is prepared for possible future expanded financial sector, Nauru should at some stage: <ul style="list-style-type: none"> <li>• require financial institution to pay particular attention to the need to apply home country requirements in host jurisdiction which do not sufficiently apply the international standards.</li> <li>• Ensure that in cases where the home and cost country requirements differ, the institution should apply the higher standard.</li> <li>• Clarify that financial institution should inform their home supervisor when they are prevented from observing appropriate AML/CFT controls.</li> </ul> </li> </ul>

<b>Shell banks (R.18)</b>	<ul style="list-style-type: none"> <li>• Include a clear prohibition on the established and continued operation of shell banks in the Corporations Act.</li> <li>• At such time that a bank is established in Nauru, ensure a clear prohibition on maintaining a respondent banking relationships with shell bank</li> <li>• At such time that a bank is established in Nauru, ensure financial institutions operating in Nauru are not permitted to be satisfied that their Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks</li> </ul>
<b>The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Establish a ‘fit and proper’ regime for licensing or authorising the operation of financial institutions beyond banks.</li> <li>• Consider including in the AMLA, or by regulation, other forms of sanctions for breaches of compliance to be issued by the FIU, such as giving the FIU the power to issue penalty notices where a breach of AMLA does not warrant fines or imprisonment in the first instance.</li> <li>• Amend AMLA or issue regulations to provide sanctions against directors or senior managers of financial institutions.</li> <li>• The FIU needs to develop policies, procedures and standard documents for its supervisory processes.</li> <li>• The FIU needs to set out a supervisory strategy, including a using range of supervisory methods such as on-site, desk review and questionnaires.</li> </ul>
<b>Money value transfer services (SR.VI)</b>	<ul style="list-style-type: none"> <li>• The FIU needs to conduct outreach to the MVTs to educate them about their obligations</li> <li>• The FIU needs to consider a simple mechanism to register the MVTs providers.</li> <li>• The FIU needs to commence supervision of this sector</li> </ul>
<b>4.Preventive Measures—Nonfinancial Businesses and Professions</b>	
<b>Customer due diligence and record-keeping (R.12)</b>	<ul style="list-style-type: none"> <li>• As DNFBPs are listed in the AMLA as financial institutions, rectification of the missing requirements listed under Recommendations 5, 6, 8, 9, 10 and 11 will ensure compliance with Recommendation 12.</li> <li>• Ensure that the NAC and NTC prioritise implementation of AML/CFT controls for the offshore sector.</li> </ul>
<b>Suspicious transaction reporting (R.16)</b>	<ul style="list-style-type: none"> <li>• Ensure that the NAC and NTC prioritise implementation of AML/CFT controls for the offshore sector and encourage STRs to be filed.</li> <li>• The recommendations made against Rec 13, 15 and 21 apply equally to DNFBPs and will address weaknesses in Recommendation 16.</li> </ul>
<b>Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b>	<ul style="list-style-type: none"> <li>• The FIU needs to bring AML/CTF obligations to the attention of the DNFBP in Nauru to ensure they understand their obligations.</li> <li>• The FIU should commence AML/CTF compliance monitoring of the company and trust service providers (NAC and NTC) as a priority.</li> <li>• Until other DNFBPs are active in Nauru, resources should remain focused on the offshore sector entities.</li> </ul>
<b>Other non-financial</b>	<ul style="list-style-type: none"> <li>• Continue with negotiations to establish banking in Nauru.</li> </ul>

<b>businesses &amp; professions (R.20)</b>	
<b>5. Legal Persons and Arrangements &amp; Non profit Organizations</b>	
<b>Legal Persons–Access to beneficial ownership and control information (R.33)</b>	<ul style="list-style-type: none"> <li>• The Corporations Registry should require information on beneficial ownership from the companies for registration which should be readily available to competent authorities.</li> <li>• Nauru should explicitly forbid the issuance of bearer shares under the Corporations Act or any other law or should require registration of beneficial ownership of bearer shares.</li> </ul>
<b>Legal Arrangements–Access to beneficial ownership and control information (R.34)</b>	<ul style="list-style-type: none"> <li>• The Nauru Trustee Corporation should require information on beneficial ownership from unit trusts to be readily available to competent authorities in Nauru.</li> </ul>
<b>Non profit organizations (SR.VIII)</b>	<ul style="list-style-type: none"> <li>• Review models for a suitable legal and regulatory framework which suits the conditions of a small island jurisdiction and the needs of the NPO sector in Nauru. This should include requirements for registration, transparency, maintenance of records, and sanctions for violations of oversight rules.</li> <li>• Consider how to conduct appropriate outreach to the NPO sector to protect it from abuse for TF</li> <li>• Nauru’s future approach to supervision or monitoring should focus on those NPOs that Account for significant share of the sector’s resources or international activities</li> <li>• Ensure measures to support effective investigation and gathering of information on NPOs, including through domestic and international coordination.</li> </ul>
<b>6. National and International Cooperation</b>	
<b>National cooperation and coordination (R.31 &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Include all relevant agencies in AML/CFT coordination meetings</li> <li>• Establish formal agreements (MOUs or the like) between Nauru’s key AML/CFT agencies to give structure to and further encourage information sharing.</li> <li>• Consider keeping formal minutes of meetings and records of actions arising from both policy and operational meetings.</li> <li>•</li> </ul>
<b>The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b>	<ul style="list-style-type: none"> <li>• Take immediate action to become party to the Palermo and Vienna Conventions within the shortest possible timeframe</li> <li>• Establish a mechanism for giving effect to UNSC 1267 and UNSCR 1373 obligations to freeze property without delay.</li> </ul>
<b>Mutual Legal Assistance (R.36, 37, 38, SR.V &amp; 32)</b>	<ul style="list-style-type: none"> <li>• Nauru should ensure that restrictions on competent authorities’ ability to take actions under the AMLA in relation to tax offences do not clash with assistance provided pursuant to the MACMA.</li> <li>• Ensure that MACMA or another statute can support the provision of mutual assistance for the service of judicial documents.</li> <li>• Consider amending the restrictive wording in relation to tax matters under the AMLA to ensure that authorities are able to provide MLA in response to requests to provide assistance.</li> <li>• Bring the ML and TF offences into line with international standards to support the fullest range of MLA, including extradition.</li> </ul>

<b>Extradition (R. 39, 37, SR.V &amp; R.32)</b>	<ul style="list-style-type: none"> <li>• Take immediate action to designate countries and/or conventions under the Extradition Act, so that the provisions under EA can be implemented.</li> </ul>
<b>Other Forms of Cooperation (R. 40, SR.V &amp; R.32)</b>	<ul style="list-style-type: none"> <li>• Nauru should strengthen formal and informal linkages between its FIU, other relevant agencies and their international counterparts to facilitate the free exchange of information and wide-ranging international cooperation.</li> <li>• Nauru should consider establishing MoUs with countries in the region in particular; become a member of the Egmont Group as soon as practicable and signing TIEAs with strategically important partner jurisdictions.</li> <li>• Nauru should remove the current restrictions on the exchange of regulatory and tax offences related information (AMLA amendments or some other means).</li> </ul>
<b>7. Other Issues</b>	
<b>Other relevant AML/CFT measures or issues</b>	<ul style="list-style-type: none"> <li>• The limited resources available for AML/CFT in Nauru should be better supported by strategies of prioritised implementation.</li> <li>• Nauru should ensure that the Nauru Agency Corporation and Nauru Trustee Corporation prioritise implementation of AML/CFT controls for the offshore sector.</li> <li>• Nauru should adopt a national AML/CFT strategy commensurate with the resources available to the government.</li> <li>• Nauru should continue to strive to attract a banking institution to ensure that a wider range of financial services are available to Nauruans and that these fall under national AML/CFT controls.</li> <li>• Nauru should push on with reforms to pass a comprehensive Criminal Code to cover all predicate offences, including comprehensive corruption offences.</li> </ul>

## **Annex 1: Details of All Bodies Met During the On-Site Visit**

- Dept of Justice and Border Control
- DPP
- Registrar of Corporations
- Department of Justice and Border Control - Customs
- Financial Intelligence Unit (FIU)
- Department of Foreign Affairs and Trade
- Department of Finance – Nauru Revenue Office
- Department of Finance – Planning and Aid Division
- Nauru Police Force (NPF)
- Nauru Fisheries and Marine Resources Authority (NFMRA)
- Nauru Agency Corporation
- Nauru Trustee Corporation

*Various private sector companies and NGOs.*

## **Annex 2: List of All Laws, Regulations, and Other Material Received**

Anti-Money Laundering Act 2008  
Bank of Nauru Act 1976  
Banking Act 1975  
Business Licenses Act 2011  
Business Names Act 1976  
Constitution of Nauru  
Corporations Act 1972  
Counter Terrorism Transnational Organised Crime Act 2004  
Criminal Code 1899  
Criminal Justice Act 1999  
Criminal Procedure Act 1972  
Currency Act 1976  
Custom Proclamation No 2 1999  
Customs Act 1921  
Custom and Adopted Laws Act 1971  
Extradition Act 1973  
Fisheries Act 1997  
Foreign Judgments (Reciprocal Enforcement) Act 1973  
Foreign Trusts Estates and Wills Act 1972  
Government Loans Act 1972  
Illicit Drugs Control Act 2004  
Immigration Act 1999  
Interpretations Act 2011  
Lands Act 1976  
Law Adoption (Trade Marks Regulations) Act 1964  
Laws Repeal and Adopting Act 1922  
Legal Practitioners Act 1973  
Legislation Publication Act 2011  
Members of Parliament (Register of Interests) Act 2004  
Mutual Assistance in Criminal Matters Act 2004  
Naoero Citizenship Act 2005  
Nauru Fisheries & Marine Resources Authority Act 1997  
Nauru Police Force Act 1972  
Nauru Trustee Corporation Act 1972  
Partnership Act 1976  
Proceeds of Crime Act 2004  
Regulations Validity Act 2001  
Secret Commissions Act 1905  
Statute Law Revision Act 2011  
Summary Offences Act 1967

FIU Guideline 1 (2007) - STR reporting  
FIU Guideline 2 (2007) – Customer Due Diligence & Record Keeping